

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 6. DEPARTMENT OF ADMINISTRATION

PUBLIC BUILDINGS MAINTENANCE

PREAMBLE

1. Sections Affected

Rulemaking Action

Article 1	Renumber
Article 1	New Article
R2-6-101	Renumber
R2-6-101	New Section
R2-6-102	Renumber
R2-6-102	New Section
R2-6-103	Renumber
R2-6-103	New Section
R2-6-104	Renumber
R2-6-104	New Section
R2-6-105	Renumber
R2-6-105	New Section
R2-6-106	Renumber
R2-6-106	New Section
R2-6-107	Renumber
R2-6-107	New Section
R2-6-108	Renumber
R2-6-108	New Section
R2-6-109	Renumber
R2-6-109	New Section
R2-6-110	New Section
R2-6-111	New Section
R2-6-112	New Section
R2-6-113	New Section
R2-6-114	New Section
Article 2	Repeal
Article 2	Renumber
R2-6-201	Repeal
R2-6-201	Renumber
R2-6-202	Repeal
R2-6-202	Renumber
R2-6-203	Repeal
R2-6-203	Renumber
R2-6-204	Repeal
R2-6-204	Renumber
R2-6-205	Repeal
R2-6-205	Renumber
R2-6-206	Repeal
R2-6-206	Renumber
R2-6-207	Repeal
R2-6-207	Renumber
R2-6-208	Repeal
R2-6-208	Renumber
R2-6-209	Repeal

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R2-6-209	Renumber
R2-6-210	Repeal
R2-6-211	Repeal
R2-6-212	Repeal
Article 3	Renumber
Article 3	New Article
R2-6-301	Renumber
R2-6-301	New Section
R2-6-302	New Section
R2-6-303	New Section
R2-6-304	New Section
R2-6-305	New Section
R2-6-306	New Section
R2-6-307	New Section
R2-6-308	New Section
R2-6-309	New Section
R2-6-310	New Section
R2-6-311	New Section
Article 4	Repeal
Article 4	New Article
R2-6-401	Repeal
R2-6-401	New Section
R2-6-402	New Section
R2-6-403	New Section
R2-6-404	New Section
R2-6-405	New Section
R2-6-406	New Section
R2-6-407	New Section
R2-6-408	New Section
R2-6-409	New Section
R2-6-501	Renumber
R2-6-501	Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 41-621(Q)

Implementing statutes: A.R.S. § 41-791(D)

3. **The effective date of the rules:**

September 16, 1997

4. **A list of all previous notices appearing in the Register addressing the final rule.**

Notice of Rulemaking Docket Opening: 2 A.A.R. 3556, August 9, 1996.

Notice of Proposed Rulemaking: 3 A.A.R. 1444, June 6, 1997.

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Scott Cooley

Address: Department of Administration
1400 West Washington, Suite 270
Phoenix, Arizona 85007

Telephone: (602) 542-2015

Fax: (602) 542-1486

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The Department of Administration (Department) is updating and reorganizing this Chapter. Rules of general applicability in Article 2 are being repealed and replaced by a new Article 1 which is more readable. Traffic and parking rules are being moved from Article 1 to Article 2. The severability rule is being moved from Article 3 to Article 5. A new Article 3, governing solicitation on state property, is proposed to clarify time, place and manner restrictions on solicitations. The Department no longer has statutory authority over the subject matter of Article 4, energy conservation and solar design standards. Accordingly, Article 4 is being repealed and replaced with a new Article 4, governing special events on state property. The new Article 4 clarifies time, place, and manner restrictions on special events. All sections in Chapter 6 are being updated to reflect current rule drafting style.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

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8. The summary of the economic, small business, and consumer impact:
Minor modifications to the Chapter improving readability will make the rules easier to use. Small businesses and consumers will benefit because it takes less time to read the rules. Small businesses also benefit from the ability to solicit business or hold special events, to the extent that these activities are permitted under the rules.
9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
The changes between the proposed rules and the final rules are minimal. The only comments received regarding the rulemaking came from within the Department of Administration. All of the changes suggested through internal comments were incorporated in the rules. The differences between the proposed rule and final rule include:
- Grammatical and punctuation changes throughout;
 - Deleted language in R2-6-102, regarding building hours, and renumbered remaining rules;
 - Deleted language in R2-6-103, regarding a closed hours register, and renumbered remaining rules;
 - Added languages to R2-6-105 to permit state employees to use bicycles for transportation to and from work;
 - Replaced language in R2-6-112 with new language prohibiting smoking unless the smoker is in a designated smoking area or exempt under A.R.S. § 36-601.02(B);
 - Deleted clause in R2-6-301(1) regarding organizational and grievance activities;
 - Shortened the timeframe in R2-6-403(B) and (C), and R2-6-404(A), (E), and (F) to 2 days;
 - Added language to R2-6-407(A)(3) to require an applicant to provide a certificate of insurance; and
 - Added language to R2-6-407(D) to require that a sponsor list the State of Arizona as an additional insured.
10. A summary of the principal comments and the agency response to them:
The Department received 8 comments on the proposed rules. These comments resulted in the changes discussed in item 9 above.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
12. Incorporations by reference and their location in the rule:
Not applicable.
13. Was this rule previously adopted as an emergency rule?
Not applicable.
14. The full text of the rules follows:

TITLE 2. ADMINISTRATION
CHAPTER 6. DEPARTMENT OF ADMINISTRATION
PUBLIC BUILDINGS MAINTENANCE

ARTICLE 1. GENERAL

Section	
<u>R2-6-101.</u>	<u>Definitions</u>
<u>R2-6-102.</u>	<u>Alcoholic Beverages</u>
<u>R2-6-103.</u>	<u>Altering Buildings or Grounds</u>
<u>R2-6-104.</u>	<u>Animals</u>
<u>R2-6-105.</u>	<u>Bicycles, Rollerblades, Rollerskates and Skateboards</u>
<u>R2-6-106.</u>	<u>Electrical or Plumbing Systems</u>
<u>R2-6-107.</u>	<u>Heating or Cooling Equipment</u>
<u>R2-6-108.</u>	<u>Noise</u>
<u>R2-6-109.</u>	<u>Plants</u>
<u>R2-6-110.</u>	<u>Roofs</u>
<u>R2-6-111.</u>	<u>Signs</u>
<u>R2-6-112.</u>	<u>Smoking</u>
<u>R2-6-113.</u>	<u>Waste</u>
<u>R2-6-114.</u>	<u>Windows</u>

ARTICLE 2. IN GENERAL

ARTICLE 1-ARTICLE 2 TRAFFIC AND PARKING

<u>R2-6-201.</u>	<u>Soliciting Permits</u>
<u>R2-6-201</u>	<u>R2-6-101. Definitions</u>

<u>R2-6-202.</u>	<u>Loitering</u>
<u>R2-6-202</u>	<u>R2-6-102. Parking areas</u>
<u>R2-6-203.</u>	<u>Schedule of hours of capitol buildings</u>
<u>R2-6-203</u>	<u>R2-6-103. Special Assignment Parking Permits</u>
<u>R2-6-204.</u>	<u>Closed hours' register</u>
<u>R2-6-204</u>	<u>R2-6-104. Operation of Vehicles on State Property</u>
<u>R2-6-205.</u>	<u>Altering, remodeling, or redecorating of buildings or grounds approval</u>
<u>R2-6-205</u>	<u>R2-6-105. Penalties</u>
<u>R2-6-206.</u>	<u>Electrical or plumbing installation or modification approval</u>
<u>R2-6-206</u>	<u>R2-6-106. Impoundment</u>
<u>R2-6-207.</u>	<u>Adjusting of heating or cooling equipment or controls</u>
<u>R2-6-207</u>	<u>R2-6-107. Hearings</u>
<u>R2-6-208.</u>	<u>Prohibited acts, general</u>
<u>R2-6-208</u>	<u>R2-6-108. Rehearing</u>
<u>R2-6-209.</u>	<u>Entry to roofs</u>
<u>R2-6-209</u>	<u>R2-6-109. General Information</u>
<u>R2-6-210.</u>	<u>Installation of signs approval</u>
<u>R2-6-211.</u>	<u>Animals within buildings</u>
<u>R2-6-212.</u>	<u>Flowers, plants, shrubs or tree removal</u>

ARTICLE 3. SOLICITATION

- R2-6-301. Definitions
- R2-6-302. Unauthorized Solicitation Prohibited
- R2-6-303. Application
- R2-6-304. Processing Procedure
- R2-6-305. Permit Issuance; Denial
- R2-6-306. Bulletin Boards
- R2-6-307. State Resources
- R2-6-308. Work Sites
- R2-6-309. Exemptions
- R2-6-310. Revocation
- R2-6-311. Review of Denial or Revocation

ARTICLE 4. ENERGY CONSERVATION AND SOLAR DESIGN STANDARDS

ARTICLE 4. SPECIAL EVENTS

- R2-6-401. Energy conservation standards for state buildings
- R2-6-401. Definitions
- R2-6-402. Unauthorized Special Event Prohibited
- R2-6-403. Application
- R2-6-404. Processing Procedure
- R2-6-405. Permit Issuance; Denial
- R2-6-406. Monitors
- R2-6-407. Risk Management
- R2-6-408. Revocation
- R2-6-409. Review of Denial or Revocation

ARTICLE 3 ARTICLE 5. SEVERABILITY

- R2-6-301. R2-6-501. Validity of Rules

ARTICLE 1. GENERAL

R2-6-101. Definitions

The following definitions apply in this Chapter:

1. "Agency" has the meaning set forth in A.R.S. § 41-1001.
2. "Department" means the Department of Administration.
3. "Director" means the Director of the Department of Administration or the Director's designated agent.
4. "Person" has the meaning set forth in A.R.S. § 1-215 but includes an agency, unless the agency is listed in A.R.S. § 41-791(B)(3).
5. "State building" means a building under the jurisdiction of the Director.
6. "State property" means those buildings or grounds under the jurisdiction of the Director.

R2-6-102. Alcoholic Beverages

A person shall not possess or consume alcoholic beverages on state property.

R2-6-103. Altering Buildings or Grounds

A person shall not alter, remodel, or redecorate state property without prior approval from the Director.

R2-6-104. Animals

A person shall not bring animals, other than an animal guide or service animal, onto state property without prior approval from the Director.

R2-6-105. Bicycles, Rollerblades, Rollerskates, and Skateboards

A person shall not use or operate bicycles, rollerblades, rollerskates, or skateboards on state property, unless that person is an

on-duty police officer on bicycle patrol or a state employee using a bicycle for transportation to and from work.

R2-6-106. Electrical or Plumbing Systems

A person shall not install or modify an electrical or plumbing system on state property, or any part of such a system, without prior approval from the Director.

R2-6-107. Heating or Cooling Equipment

A person shall not tamper with or adjust heating or cooling equipment or controls on state property without prior approval from the Director.

R2-6-108. Noise

A person shall not create loud noises on state property which interfere with the work of an employee or daily business of an agency.

R2-6-109. Plants

A person shall not pick, cut, or remove flowers, shrubs, trees, or other plants or parts of plants from state property without prior approval from the Director.

R2-6-110. Roofs

A person shall not be on the roof of a state building without prior approval from the Director.

R2-6-111. Signs

A person shall not install a sign of any type on state property without prior approval from the Director.

R2-6-112. Smoking

A person shall not smoke in a state building unless the person is in a designated smoking area or exempt under A.R.S. § 36-601.02(B).

R2-6-113. Waste

A. A person shall not leave garbage, litter, trash, human or animal waste, or any other kind of waste on state property unless the waste is deposited in a container the Department maintains for that kind of waste.

B. A person shall not deposit waste collected from a private residence or commercial business on state property.

R2-6-114. Windows

A person shall not open windows in air-conditioned state buildings without prior approval from the Director.

ARTICLE 2. IN GENERAL

ARTICLE 1 ARTICLE 2. TRAFFIC AND PARKING

R2-6-201. Soliciting Permits

No person shall directly or indirectly solicit for any purpose within the capitol buildings or upon the capitol grounds without having first obtained a permit from the Director or his designated agents.

R2-6-101. R2-6-201. Definitions

No change.

R2-6-202. Loitering

No person shall loaf or loiter on the capitol grounds or in the capitol buildings.

R2-6-102. R2-6-202. Parking areas

No change.

R2-6-203. Schedule of hours of capitol buildings

Unless otherwise provided by law, and except on holidays, the capitol buildings shall remain open from 7:30 a.m. until 5:30 p.m. each day on Monday through Friday.

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~~R2-6-103.~~ **R2-6-203. Special Assignment Parking Permits**
No change.

~~R2-6-204.~~ **Closed hours' register**
Any person desiring to enter or leave any of the capitol buildings at any time other than that designated in R2-6-203 shall sign in and out on a register provided by the Director or his designated agents.

~~R2-6-104.~~ **R2-6-204. Operation of Vehicles on State Property**
No change.

~~R2-6-205.~~ **Altering, remodeling, or redecorating of buildings or grounds approval**
There shall be no altering, remodeling, or redecorating in any of the capitol buildings or on the capitol grounds by any Department, board or agency without prior approval from the Director or his designated agents.

~~R2-6-105.~~ **R2-6-205. Penalties**
No change.

~~R2-6-206.~~ **Electrical or plumbing installation or modification approval**
There shall be no electrical modification, including convenience outlets or light fixtures, without the prior approval of the Director or his designated agents. There shall be no electrical or plumbing equipment installations without the prior approval of the Director or his designated agents.

~~R2-6-106.~~ **R2-6-206. Impoundment**
No change.

~~R2-6-207.~~ **Adjusting of heating or cooling equipment or controls**
There shall be no tampering with or unauthorized adjusting of heating or cooling equipment or controls.

~~R2-6-107.~~ **R2-6-207. Hearings**
No change.

~~R2-6-208.~~ **Prohibited acts, general**
The following acts are prohibited:

1. The willful and malicious or careless or negligent dropping, throwing, placing or scattering in the buildings or on the grounds of any litter.
2. The distributing of handbills or advertising in the buildings or on the grounds.
3. Bicycling, skating, or skateboarding in the buildings or on the grounds.
4. Advertising of any type except in designated areas or on designated bulletin boards.
5. Opening windows in air-conditioned buildings without prior approval of the Director or his designated agents.
6. Smoking in areas where signs indicate smoking is prohibited.

~~R2-6-108.~~ **R2-6-208. Rehearing**
No change.

~~R2-6-209.~~ **Entry to roofs**
No one shall be permitted on the roofs of the capitol buildings except authorized personnel.

~~R2-6-109.~~ **R2-6-209. General Information**
No change.

~~R2-6-210.~~ **Installation of signs approval**
No signs of any type shall be installed in the buildings or on the grounds without prior approval of the Director or his designated agents.

~~R2-6-211.~~ **Animals within buildings**
No animals, other than guide dogs, shall be permitted in any building, without the prior approval of the Director or his designated agents.

~~R2-6-212.~~ **Flowers, plants, shrubs, or tree removal**
No one shall pick, cut, or remove flowers, plants, shrubs or trees from the grounds without prior approval of the Director or his designated agents.

ARTICLE 3. SOLICITATION

R2-6-301. Definitions
The following definitions apply in this Article:

1. "Solicitation" means any activity which can be interpreted as being for the promotion, sale, or transfer of products, services, memberships, or causes. Distribution or posting of advertising, circulars, flyers, handbills, leaflets, posters, or other printed information for these purposes is solicitation.
2. "Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.
3. "Solicitor" means the person conducting a solicitation.
4. "Work site" means any location within a state building where public employees or officers conduct the daily business of an agency. Cafeterias and break rooms are not work sites.

R2-6-302. Unauthorized Solicitation Prohibited
A person shall not conduct a solicitation on state property without express written permission from the Director.

R2-6-303. Application

- A. Any person who would like to conduct a solicitation on state property may apply for a permit by filing, either in person or by mail, a Department approved solicitation application form with the Director's Office.
- B. The completed application form shall be submitted at least 15 days prior to the desired date of the solicitation. A completed application form is 1 which is legible and contains, at a minimum, all of the following information:
 1. The name, address, and telephone number of the solicitor.
 2. The proposed date of the solicitation and the approximate starting and concluding times.
 3. The specific, proposed location for the solicitation.
 4. A general description of the solicitation's purpose.
 5. Copies of solicitation materials to be used.

R2-6-304. Processing Procedure

- A. Within 3 days of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete application shall supply the missing information within 5 days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.
- C. Upon receipt of all missing information within 5 days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.
- D. The Department shall not process an application for a permit until the applicant has fully complied with R2-6-303.
- E. The Director shall render a permit decision no later than 3 days after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.

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- F.** For the purpose of A.R.S. § 41-1073, the Department establishes the following permit timeframes:
1. Administrative completeness review timeframe: 3 days.
 2. Substantive review timeframe: 3 days.
 3. Overall timeframe: 6 days.

R2-6-305. Permit Issuance; Denial

- A.** Prior to issuing a permit, the Director shall review the application.
- B.** The Director may issue a permit to an applicant who has complied with the application requirements in R2-6-303;
- C.** The Director may deny a permit for 1 or more of the following reasons:
1. The solicitation interferes with the work of an employee or daily business of an agency;
 2. The solicitation conflicts with the time, place, manner, or duration of other events or solicitations for which permits have been issued or are pending;
 3. The solicitation creates a risk of injury or illness to persons or risk of danger to property;
 4. The applicant has not complied with the requirements of this Article.
- D.** A permit shall not be issued earlier than 60 days prior to the solicitation.
- E.** When the Director denies a permit, the Department shall send the applicant a written notice explaining:
1. The reason for denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a hearing to challenge the denial;
 3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 4. The time periods for appealing the denial.

R2-6-306. Bulletin Boards

- A.** The Director shall designate at least 1 bulletin board for solicitation material in each state building.
- B.** A person conducting a solicitation shall post solicitation material on bulletin boards designated under subsection (A).
- C.** The Department shall remove solicitation material that is outdated or improperly posted.

R2-6-307. State Resources

A person shall not use state materials, supplies, or equipment or other resources, such as payroll stuffing or interoffice mail, to conduct a solicitation.

R2-6-308. Work Sites

Except for posting solicitation material on a bulletin board designated under R2-6-306, a person shall not conduct a solicitation at a work site.

R2-6-309. Exemptions

This Article does not apply to the following state programs:

1. The State Deferred Compensation Program.
2. The State Employees Charitable Campaign.
3. The U.S. Savings Bond Drive.
4. The United Blood Services Blood Drive.
5. The Capitol Rideshare Commuter Club.
6. The Capitol Rideshare Clean Air Campaign.
7. The Employee Wellness Program.
8. Employee recognition programs of each agency subject to these rules.

R2-6-310. Revocation

- A.** The Director may revoke a permit for failure to comply with this Article or other applicable laws.

- B.** When the Director revokes a permit, the Department shall send the solicitor written notice, explaining:

1. The reason for revocation, with citations to supporting statutes or rules;
2. The solicitor's right to seek a hearing to challenge the revocation;
3. The solicitor's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The time periods for appealing the revocation.

R2-6-311. Review of Denial or Revocation

- A.** Under A.R.S. §§ 41-1092.03 through 41-1092.11, an applicant or solicitor may obtain a hearing on a denial or revocation.
- B.** The applicant or solicitor shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-6-305(E) or R2-6-310(B).
- C.** The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.

ARTICLE 4. ENERGY CONSERVATION AND SOLAR DESIGN STANDARDS

ARTICLE 4. SPECIAL EVENTS

R2-6-401. ~~Energy conservation standards for state buildings~~

~~All new state buildings, including buildings of state-supported institutions of higher education, shall comply with the *Arizona Guidelines for Energy Conservation in New Building Construction*, as published by the Arizona Energy Office, which are hereby adopted and incorporated by reference as set forth therein. (Copies of these Guidelines are on file with the Secretary of State.)~~

R2-6-401. Definitions

The following definitions apply in this Article:

1. "Special event" or "event" means an assembly, ceremony, demonstration, display, festival, gathering, parade, press conference, rally, or any other distinct activity.
2. "Sponsor" means the person holding a special event.

R2-6-402. Unauthorized Special Event Prohibited

A person shall not use state buildings or grounds for a special event without express written permission from the Director.

R2-6-403. Application

- A.** Any person who would like to hold a special event may apply for a permit by filing, either in person or by mail, a Department approved event application form with the Office of Special Events.
- B.** The completed application form shall be submitted at least 2 days before the desired date of the special event. A completed application form is 1 which is legible and contains, at a minimum, all of the following information:
1. The name, address, and telephone number of the sponsor;
 2. The proposed date of the event and the approximate starting and concluding times;
 3. The specific, proposed location for the event;
 4. A general description of the event, including equipment and facilities to be used;
 5. Approximate number of persons expected to be in attendance;
 6. The name, address, and telephone number of the person responsible for cleanup of the area after the activity, if different from the person in subsection (B)(1).

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7. The name, address, and telephone number of any chief monitor who will be designated to direct the event;
8. A description of the badge or article of clothing used to identify monitors;
9. A copy of any insurance policy for the special event;
10. A copy of any contract for medical, sanitary and security services.

C. The Director may accept a completed application form submitted less than 2 days before a press conference if the Director determines that enforcing the 2-day requirement would nullify the need for the press conference. In such a situation, R2-6-404 does not apply.

R2-6-404. Processing Procedure

- A. Within 1 day of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete application shall supply the missing information within 5 days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.
- C. Upon receipt of all missing information within 5 days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.
- D. The Department shall not process an application for a permit until the applicant has fully complied with R2-6-403.
- E. The Director shall render a permit decision no later than 1 day after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.
- F. For the purpose of A.R.S. § 41-1073, the Department establishes the following permit timeframes:
 1. Administrative completeness review timeframe: 1 day.
 2. Substantive review timeframe: 1 day.
 3. Overall timeframe: 6 days.

R2-6-405. Permit Issuance; Denial

- A. Prior to issuing a permit, the Director shall review the application.
- B. The Director may issue a permit to an applicant who has:
 1. Complied with the application requirements in R2-6-403;
 2. Posted any deposit necessary under R2-6-407;
 3. Obtained any insurance necessary under R2-6-407; and
 4. Submitted evidence that the applicant will provide any medical, sanitary and security services necessary under R2-6-407. Submission of a copy of the contract for these services will satisfy this requirement.
- C. The Director may deny a permit for 1 or more of the following reasons:
 1. The event interferes with the work of an employee or daily business of an agency;
 2. The event conflicts with the time, place, manner, or duration of other events for which permits have been issued or are pending;
 3. The event creates a risk of injury or illness to persons or risk of danger to property;
 4. The applicant has not complied with the requirements of this Article.
- D. A permit shall not be issued earlier than 60 days prior to the special event.
- E. When the Director denies a permit, the Department shall send the applicant a written notice explaining:
 1. The reason for denial, with citations to supporting statutes or rules;

2. The applicant's right to seek a hearing to challenge the denial;
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The time periods for appealing the denial.

R2-6-406. Monitors

The sponsor shall designate 1 monitor for every 50 persons expected to be in attendance. The monitors shall wear a uniform, distinctive badge or article of clothing at all times during the event for identification purposes.

R2-6-407. Risk Management

- A. The Director may take 1 or more of the following actions to the extent it is necessary and in the best interests of the state:
 1. Impose conditions on the conduct of the event in the permit;
 2. Require the applicant to post a deposit against damage and cleanup expense;
 3. Require the applicant to carry liability insurance and provide the certificate of insurance;
 4. Require the applicant to provide medical, sanitary, and security services.
- B. The Director shall consider all of the following criteria to determine whether 1 or more of the actions in subsection (A) is necessary and in the best interests of the state:
 1. Previous experience with similar events;
 2. Deposits required for similar events in Arizona;
 3. Risk data;
 4. Medical, sanitary, and security services required for similar events in Arizona and the cost of those services;
 5. The applicant's ability to pay a deposit, an insurance premium, or a service provider.
- C. The Department shall not provide insurance or guarantee against damage to equipment or personal property of any person using state buildings or grounds.
- D. If the Director requires insurance for a special event, the sponsor shall list the State of Arizona and the Department of Administration as additional insured entities.
- E. The sponsor is liable to the state for any injury done to its property and for any expense arising out of the sponsor's use of state buildings or grounds.

R2-6-408. Revocation

- A. The Director may revoke a permit for failure to comply with this Article, permit conditions, or other applicable laws.
- B. When the Director revokes a permit, the Department shall send the sponsor written notice, explaining:
 1. The reason for revocation, with citations to supporting statutes or rules;
 2. The sponsor's right to seek a hearing to challenge the revocation;
 3. The sponsor's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 4. The time periods for appealing the revocation.

R2-6-409. Review of Denial or Revocation

- A. Under A.R.S. §§ 41-1092.03 through 41-1092.11, an applicant or sponsor may obtain a hearing on a denial or revocation.
- B. The applicant or sponsor shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-6-405(E) or R2-6-408(B).
- C. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.

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ARTICLE 3. ARTICLE 5. SEVERABILITY

invalid, the holding such decision does shall not affect the validity of the remaining rules

R2-6-301.R2-6-501. Validity of Rules

If a ~~Should any rule or portion of a any rule contained in this~~
~~Chapter herein is held be found unconstitutional or~~

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

**CHAPTER 10. DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT SERVICES**

PREAMBLE

1. **Sections Affected**
R2-10-101
R2-10-108
- Rulemaking Action**
Amend
New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 41-621(Q) is the Department's general rulemaking authority.
Implementing statute: A.R.S. § 41-621(E)
3. **The effective date of the rules:**
September 12, 1997
4. **A list of all previous notices appearing in the Register addressing the adopted rule.**
Notice of Rulemaking Docket Opening: 3 A.A.R. 867, March 28, 1997.
Notice of Proposed Rulemaking: 3 A.A.R. 1630, June 13, 1997.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: John Kindree
Address: Risk Management
1818 West Adams
Phoenix, Arizona 85007
Telephone: (602) 542-1492
Fax: (602) 542-2021
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
A.R.S. § 41-621 was amended in 1996 by the legislature to include a provision that allows the Director of the Department of Administration to impose on any state department, agency, board, or commission a deductible of not more than \$10,000 per loss that arises out of a property, liability, or workers' compensation loss. The rule establishes the conditions under which the deductible may be assessed and what actions the agencies may take to have its deductibles waived. The rule emphasizes prompt reporting, preventative actions and other cooperative measures to be taken by the agencies with Risk Management's assistance to waive any deductibles and significantly reduce overall losses.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
8. **The summary of the economic, small business, and consumer impact:**
The rules affect all state departments, agencies, boards and commissions, but do not affect the general public or any private businesses. There may be some additional costs associated with the development of these loss prevention programs. Risk Management will provide substantial assistance to help the agencies with the design, implementation and training necessary to establish these various programs. Risk Management will also make funds available on a competitive basis from its grant program to offset some of the costs of program development. The overall impact to the state should be extremely favorable, since losses have historically averaged approximately \$30,000,000 for property and liability claims and approximately \$13,000,000 for workers' compensation claims. One loss prevention program in each state agency addressing their most significant exposure could result in losses eventually being reduced as much as \$5,000,000 to \$10,000,000 per year statewide. All state agencies that comply with these rules, at virtually no incremental cost to themselves, will see reductions in their Risk Management cost allocation as a result of fewer losses.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
Changes were made to improve the clarity, conciseness, and understandability of the rule language and to clarify the effective start date of 1 of the programs.

10. A summary of the principal comments and the agency response to them:
There were no comments to the proposed rules.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.
12. Incorporations by reference and their location in the rule:
Joint Legislative Budget Committee Rule 14 in R2-10-108(A).
13. Was this rule previously adopted as an emergency rule?
No.
14. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 10. RISK MANAGEMENT SERVICES

ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE

Section

R2-10-101. Definitions

R2-10-108. Deductibles and Waivers

R2-10-101. Definitions

No change.

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
6. "Deductible" means the amount of a loss that the agency will pay before Risk Management is obligated to pay anything.
- 6-7. No change.
- 7-8. No change.
- 8-9. No change.
- 9-10. No change.
- 10-11. No change.
- 11-12. No change.
- 12-13. No change.
- 13-14. No change.
- 14-15. No change.
- 15-16. No change.
- 16-17. No change.
- 17-18. No change.
- 18-19. No change.
- 19-20. No change.
- 20-21. No change.
- 21-22. No change.
- 22-23. No change.
- 23-24. No change.
- 24-25. No change.
- 25-26. No change.
- 26-27. No change.
- 27-28. No change.

R2-10-108. Deductibles and waivers

A. Liability judgments and claim settlements.

1. Each agency shall be charged a deductible of \$10,000 on each court judgment of \$150,000 or more and on each claim approved for settlement by the Joint Legislative Budget Committee under JLBC Rule 14, State Liability Claims (April 25, 1997), which is incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
2. RM shall waive the deductible under the following conditions:

- a. The agency provides a response to RM, in the form of a plan, as to the actions to be taken to eliminate or limit similar future risk of liability to the state; and
- b. The plan is submitted as supportive detail to the agency's official JLBC Rule 14 response, or is provided to RM within 60 days of the settlement date; and
- c. RM approves the plan as reasonable and effective; and
- d. The plan is implemented by the agency within 30 days of RM approval, and the agency provides brief monthly status reports on the essential elements of the plan's implementation.

3. If the agency fails to respond as outlined in subsection (A)(2), RM shall charge a deductible of \$10,000 on the subject judgment or claim as well as each subsequent claim resulting from that cause or exposure until all conditions of the waiver have been met.

B. Workers' compensation claims.

1. Beginning January 1, 1999, each agency shall be charged a deductible on each workers' compensation claim not reported within 10 days of the occurrence being reported by the employee to their supervisor, or other agency representatives. The deductible amount of the claim shall be equal to 20% of the total claim, not to exceed \$10,000.
2. RM shall waive the deductible on all of the agency's workers' compensation claims reported after the 10-day period, except those identified in subsection (C) if the agency meets the following criteria:
 - a. In calendar year 1998, the agency reports 50% of all occurrences of industrial injury or illness within 48 hours of being reported by the employee to their supervisor, or other agency representatives. The computation for the criteria will be on a rolling 12-month average, and the deductible will be applicable to claims filed during the individual months of 1999.
 - b. In a calendar year 1999, the agency reports 66% of all occurrences of industrial injury or illness within 48 hours of being reported by the employee to their supervisor, or other agency representatives. The computation for the criteria will be on a rolling 12-month average, and the deductible will be applicable to claims filed during the individual months of 2000.
 - c. In calendar year 2000, and all years forward, the agency reports 75% of all occurrences of industrial injury or illness within 48 hours of being reported

C. Loss prevention opportunities.

3. If the agency fails to meet the conditions of subsection (C)(2), a deductible of not more than \$10,000 shall be charged on each claim resulting from the significant exposure until all conditions of the waiver have been met.

- E. RM shall have the right to waive any deductible to any agency for just cause. Just cause exists when the application of a deductible is not warranted due to the circumstances of the claim, or is otherwise in the best interests of the state.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

PREAMBLE

1. Sections Affected

Article 1
R18-15-101
R18-15-102
R18-15-103
R18-15-104
R18-15-105
R18-15-106
R18-15-107
R18-15-108
R18-15-109
R18-15-110
R18-15-111
R18-15-112
Article 2
R18-15-201
R18-15-202
R18-15-203
R18-15-205
R18-15-206
R18-15-207
R18-15-208
Article 3
R18-15-301
R18-15-302
R18-15-303
R18-15-304
R18-15-305
R18-15-306
R18-15-307
R18-15-308
Article 4
R18-15-401
R18-15-402
R18-15-403

Rulemaking Action

New Article
New Section
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2. **The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):**

Authorizing & Implementing statutes: A.R.S. §§ 49-373(B)(7), 49-374, 49-374.01, 49-376

3. **The effective date for the rules:**

Effective on the date of receipt by the Secretary of State.

4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Docket Opening: 3 A.A.R. 1419, May 30, 1997

Notice of Proposed Rulemaking: 3 A.A.R. 1395, May 30, 1997

5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Primary Name: Lynn A. Keeling *on behalf of the Board of Directors of the Water Infrastructure Finance Authority of Arizona*

Address: Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012

Telephone: (602) 207-2223, (800) 234-5677, ext. 2223 (Arizona only)

Fax: (602) 207-2251

TTD: (602) 207-4829

Secondary Name: Greg Swartz, Executive Director

Address: Water Infrastructure Finance Authority
3033 North Central Avenue
Phoenix, Arizona 85012

Telephone: (602) 207-4707, (800) 234-5677, ext. 4707 (Arizona only)

Fax: (602) 207-4888

TTD: (602) 207-4829

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

During the 43rd Legislative Session, House Bill 2304, Chapter 130, Laws 1997 was passed. The governor signed this bill into law on April 22, 1997. The law became effective April 22, 1997, due to an emergency enactment. This legislation renamed the Wastewater Management Authority of Arizona as the Water Infrastructure Finance Authority of Arizona (WIFA). Prior to this legislation, WMA operated as a financing organization for wastewater treatment systems and nonpoint source projects. The new Authority now finances public drinking water facilities as well as wastewater facilities.

When a board or agency changes its function, it essentially becomes a new organization. WIFA's purpose for loaning money has not changed, but the recipients of financial assistance and the funding sources have been expanded. This change is accomplished by repealing the Wastewater Management Authority and its rules, and creating a new Chapter.

WIFA is a public financing authority that can fund wastewater treatment facilities, nonpoint source projects (for example a dairy farm) and drinking water facilities (eligible borrowers). A public financing authority is more like a bank than a regulatory agency. WIFA does not regulate anything or anybody. WIFA is solely authorized to receive funds from Congress, and distribute the funds pursuant to the Clean Water Act and the Safe Drinking Water Act. WIFA received authority from the Arizona Legislature to be the agency who receives the federal funding and then awards low interest loans to the eligible borrowers previously described. WIFA is responsible for funding projects that will be successful and capable of repayment. Therefore, WIFA has authority to give low interest loans for different terms, that is 5 years, 10 years, 20 years, and in some instances 30 years.

The primary authority for WIFA to receive funds from Congress is contained in the Clean Water Act, 33 U.S.C. 101 through 608, and the Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25). The federal acts contain some of the definitions used in this rule which are noted by the reference to the United States Code. The federal acts contain the following information about the revolving funds:

The Administrator shall offer to enter into agreements with eligible states (that is states with legal authority to receive the funds - HB 2304, and states that have primacy which Arizona does for the drinking water program, (not required for the clean water fund), and civil penalty authority for drinking water violations (found in HB 2304) to make capitalization grants, including letters of credit, to the states for health protection objectives and to promote the efficient use of fund resources (42 U.S.C. 300(j)(130)). Pursuant to the Safe Drinking Water Act, if the federal grants are not obligated by the last day which the grants are available, then the money is reallocated. This means that if Arizona does not have the rules in place to loan the money received by Congress by the end of this year, that we may lose our allotment. Therefore, time is of the essence for WIFA to have the rules in place so the process for classifying, ranking, and creating the intended use plan (the plan for allotment of the federal grant money).

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WIFA has authority to receive and distribute federal funds for wastewater treatment facilities, nonpoint source projects, and drinking water facilities. The new chapter will be comprised of 4 articles. Article 1: The definitions and the requirements for any funding that is common to financing any specific type of facility. An applicant must have the legal capability to borrow funds from WIFA (pursuant to both federal and state statute). An applicant must demonstrate financial capability to repay financial assistance. The Board may review an applicant's technical capability to construct, operate and maintain the operation of the funded project. The Board will review an applicant's managerial and institutional capability to ensure the facility can remain in compliance or come into compliance as a result of the funded project, and the applicant's staff is adequately trained to support the facility. The Board will recommend changes to the project if the facility is unable to demonstrate managerial and technical capability. The Board will review each applicant's readiness to proceed relative to constructing and operating the project. Readiness to proceed defines itself. For example, if the project is a funded project for the 1997-1998 funding year, but if the project has not received voter approval, then the project is "not ready to proceed." The Authority will move to the next project that can be funded if the previously described project will not proceed during the current funding year.

As before in Chapter 10, the Board will determine interest rates. The proposed rules retain existing procedures for disbursements, repayments, and dispute resolution. Additionally, the Board's source of administrative funding is defined.

A description of the contents of each Section is listed below:

R18-15-101 Definitions. This section includes new definitions to reflect the statutory revisions. The new definitions include "Clean Water Revolving Fund" to define the fund for wastewater treatment facilities and nonpoint source projects. "Drinking Water Facilities" is defined relative to Article 3 and state statutes, which includes essentially all regulated entities that provide drinking water that is that must test and submit test results to ADEQ. "Drinking Water Revolving Fund" is defined as the new fund for financing drinking water facilities. Other definitions are amended to reflect the statutory changes and primarily to reference drinking water facilities.

R18-15-102 Application Process. This section describes the general process to apply for financial assistance. It directs applicants to the appropriate Article consistent with the applicant's financial assistance request. Each applicant will follow Article 1 for general procedures, and then follow Articles 2, 3, or 4 as applicable for specific financial assistance requirements. To ensure protection of confidential information, the WIFA will not disclose any material marked "confidential."

R18-15-103 Legal Capability. This section enumerates requirements for a facility to legally borrow from WIFA. If a wastewater treatment facility, nonpoint source project, or a drinking water facility does not have the "legal authority" to borrow from WIFA, then the facility or project may not participate in this public financing process. This section reflects state law requirements found in A.R.S. Titles 9, 11, and 48.

R18-15-104 Financial Capability. This section outlines the information required by the Board to ensure repayment of the loan. This section is similar to the section repealed under Chapter 10.

R18-15-105 Technical Capability. This section describes the type of information reviewed by the Board to ensure an applicant can construct, operate, and maintain the proposed project.

R18-15-106 Managerial and Institutional Capability. This section describes the type of information reviewed by the Board to verify the management of the facility. The Board will review the applicant's management capability and the applicant's compliance history. If the Board finds the current facility is not able to manage the proposed facility, then the Board may recommend modifications to the proposed project.

R18-15-107 Environmental Assessment Review. This section explains in great detail what is required to determine whether there is an impact on the environment. In the case of the wastewater treatment facilities or drinking water facilities, if the project rehabilitates an existing facility, then it is exempt from the environmental assessment, or the project is minor upgrades, or the project utilizes on-site technologies, then the project is categorically exempt from requiring an environmental assessment. If there is no exemption, the process to determine the Environmental Assessment and other associated steps and reporting is explained. It mirrors what was in the Chapter 10, and is applicable to all fundable activities. It is believed that the drinking water facilities will probably not need the assessment, but it is required in the Safe Drinking Water Act.

R18-15-108 Readiness to Proceed. This section defines the levels of an applicant's readiness to proceed with the project. The Board cannot issue funds until the indebtedness (loan) has been authorized. This explanation has been clarified.

R18-15-109 Interest Rate Determinations. This section explains how the Board determines interest rates. Normally, the Board loans funds around 3% to 4.5%. This section is similar to the section repealed under Chapter 10. This section is used to implement the allowable "forgivable principal." Although the Safe Drinking Water Act authorizes forgivable principal to any drinking water facility, Arizona law limits forgivable principal to only "political subdivisions" because the government is not allowed to gift money according to the Arizona constitution. WIFA does not intend to exercise this authority on a regular basis, because it reduces the available loan money in the revolving fund. Therefore, WIFA envisions this occurring on a very limited case-by-case basis, and it will be done in the best interest of the state.

18-15-110 Disbursements and Repayments. This section explains disbursements, late fees, and the requirement for a project account. If a loan repayment is over 90 days past due, it may be referred to the Office of the Attorney General. This section is similar to the section repealed under Chapter 10.

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R18-15-111 Administration. This section describes the limitations on the amount and the source of the funding for WIFA. WIFA is a self-supporting board. This section clarifies authority found in statute. This section is similar to the section repealed under Chapter 10.

R18-15-112 Disputes. This section explains the informal process for challenging the priority or funding of a facility. This process has been in place for the financing of wastewater treatment facilities and nonpoint source projects. This will now apply to the financing of drinking water systems as does the remainder of this Article. This is the same as the repealed Chapter 10.

Article 2 contains the evaluation criteria for the Clean Water Revolving Fund which finances wastewater and nonpoint source projects. This article mirrors Chapter 10, with only the name change from the state revolving fund to the Clean Water Revolving Fund, and the Wastewater Management Authority is now titled the Water Infrastructure Finance Authority. The timeframes for public notice were reduced from 30 to 45 days to 15 to 21 days per the public's request. WIFA asked the public why the attendance had tended to be so low, and most people indicated that more than 2 to 3 weeks notice was too far in advance for a meeting that did not typically require advance preparation on their part.

Article 3 contains the evaluation criteria for the Drinking Water Revolving fund which finances drinking water facilities. It describes the types of financial assistance available and the process for distribution of funds to drinking water facilities. Each of the sections within Article 3 are based on sections found within Article 2 which if further patterned after the sections repealed from Chapter 10. The variances in Article 3 from Article 2 reflect the statutory requirements for the Drinking Water Revolving Fund.

R18-15-301. Types of Financial Assistance Available contains the type of financial assistance available as authorized by the Safe Drinking Water Act Amendments of 1996 (SDWA). SDWA authorizes states to loan money, purchase or refinance debt, guarantee or purchase insurance, provide security as a source of repayment.

R18-15-302. Eligibility Requirements for Financial Assistance explains the sections which must be complied with to be eligible for financial assistance. The applicant must comply with Article 1 and demonstrate legal, financial, technical, managerial and institutional capability, and be ready to proceed with the project.

R18-15-303. Drinking Water Revolving Fund Intended Use Plan describes the process for publishing the annual Intended Use Plan, which lists fundable projects, the amount of financial assistance available, and estimated interest rates. The Intended Use Plan is published for public review and comment before being finalized by the Board.

R18-15-304. Drinking Water Revolving Fund Priority List contains an explanation of the annual project priority list process. This section uses the criteria found in R18-15-305 and R18-15-306. R18-15-305 describes the priority classes and R18-15-306 contains the ranking criteria. The classes and ranking criteria were arrived at through weekly stakeholder meetings during March and April of 1997. At these meetings, representatives from drinking water facilities or municipalities created the project priority list summarized in this proposed rule. The stakeholders agreed that Class A projects are violations of the primary drinking water standards whereby acutely toxic contaminants, that is the ability of a contaminant to cause deleterious effects resulting in severe biological harm or death soon after a single exposure or dose; should be the highest priority for receipt of financial assistance to correct the problem as soon as possible. This priority scheme is consistent with the SDWA. Class B projects are violations of the drinking water standards where continuous exposure to a contaminant over a long period of time will cause deleterious human health effects. Class C projects are upgrades, rehabilitations, or construction of a new facility. Class D is physical, service or management consolidation of water facilities. Class E are projects directed at future growth or refinancing of existing long-term indebtedness. Once the Board places projects within 1 of the 5 classes, the scoring criteria are applied to each project. As an example, 10 projects may be within Class A, but the ranking criteria (R18-15-306) will determine the highest priority within Class A. Assuming the projects are ready to proceed, Class A projects receive financial assistance before Class B projects; Class B before Class C; Class C before Class D; and Class D before Class E.

R18-15-306. Drinking Water Revolving Fund Priority List Ranking Criteria. This section explains the formula and the point assignment for ranking individual projects. The priority value equals the health criteria points plus the condition of the facilities and sources points, plus the local fiscal capacity points, plus the prior year funding points, plus points assigned for consolidation and regionalization. During the creation of this ranking process, stakeholders classified, scored and ranked 8 facilities using the proposed classification and scoring criteria. Stakeholders determined that the priority setting process worked as expected when applied to real facilities.

R18-15-307. Project Construction. Consistent with state law for the construction of all drinking water facilities, the Department shall perform an on-site inspection and the applicant shall demonstrate compliance with easements, contracts, approvals, permits, and all applicable federal, state, and local laws related to leases, zoning permits, building permits, flood plain approvals, air quality permits, and solid waste approvals. Construction shall be completed in compliance with 18 A.A.C. 4, Department of Environmental Quality Safe Drinking Water Program. One year after the project is completed, the recipient of funds shall certify to WIFA that the drinking water facility meets design specifications. If the recipient is unable to make this certification, the recipient is required to submit a corrective action plan which must describe the problem, solution, and schedule for corrective action.

R18-15-308. Drinking Water Revolving Fund Requirements. This section contains requirements for funding found in the Safe Drinking Water Act Amendments of 1996. The Board identifies the Drinking Water Revolving Fund requirements

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that are applicable to the specific project. The applicant then designs the user charge system, informs the users of this system to ensure the class of users pay their proportionate share of operation, maintenance, and including replacement costs. Each applicant shall certify that it has not violated any laws or acted in an unethical manner related to this project.

Article 4 contains the financial assistance WIFA can provide independent of the clean water and drinking water revolving funds. WIFA is allowed to act as a conduit issuer of bonds on behalf of Arizona local units of government as authorized in the 1997 revisions to A.R.S. §§ 49-371 through 383.

R18-15-401 Types of Financial Assistance Available. WIFA may issue water quality bonds for loans and to purchase or refinance local debt obligations of political subdivision. Additionally, the Authority may guarantee or purchase insurance for local obligations for eligible applicants to improve credit market access or reduce interest rates.

R18-15-402 Eligibility Requirements for Financial Assistance. This section references the sections found in Article 1 that must be complied with in order to receive financial assistance under this Article.

R18-15-403 Project Construction. Consistent with Article 2 and Article 3, all construction related permits must be obtained, and there must be compliance with all federal, state, and local laws. Additionally, 1 year after project completion, the recipient must either certify compliance with the design specifications or defend the noncompliance and provide any necessary corrective action.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not Applicable.

8. A summary of the economic, small business and consumer impact:

A. Rulemaking History and Purpose

This rulemaking adopts new rules, which replace the former Wastewater Management Authority of Arizona (WMA) rules, created in 1989 (R18-10-101 et seq.), and expands its authority to provide financing for public drinking water facilities (see HB 2304, Laws 1977, Ch. 130, pp. 1044-1067, effective April 22, 1997, by emergency enactment). This means that WIFA not only can provide low-interest loans to wastewater treatment facilities and nonpoint source projects, but to public drinking water facilities located in Arizona, excluding water systems owned by federal agencies. These drinking water facilities include community water systems or nonprofit noncommunity water systems. Congress authorized financial assistance to communities to help them meet federal drinking water requirements in the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300(f)).

This rulemaking has 4 purposes: (1) To move the rules found in 18 A.A.C. 10, Article 1 ("Financing Wastewater Facilities and Nonpoint Source Discharge Programs") into 18 A.A.C. 15; (2) To replace all references to the WMA with the newly named WIFA; (3) To provide for financing of public drinking water facilities; and (4) To make other necessary amendments.

B. Introduction

WIFA anticipates this rulemaking will maximize net benefits to society. Potential benefits include economic, environment, and public health. The reason these benefits are likely is because WIFA is organized to provide low-interest loans to drinking water, wastewater, or other nonpoint source facilities that qualify for such assistance. Society is better off, relative to no regulation, if a rulemaking shows a net benefit, that is, incremental benefits exceed incremental costs. This is known as the economic efficiency criterion. However, necessary condition is that the cost represents the least amount of resources necessary to achieve the rulemaking objectives. WIFA believes this rulemaking represents such a case.

Congress has authorized grant money to be used as collateral for the low-interest loans, thereby creating a state revolving fund. There are 2 funds, that is, the clean water fund which is for wastewater treatment facilities and nonpoint source projects; the drinking water fund which is for drinking water facilities. The Safe Drinking Water Act does allow for up to 15% of the total Drinking Water Fund be used solely for drinking water facilities that supply water to fewer than 10,000 people. Therefore, the smaller systems will be given preference to obtain this percentage of the fund.

WIFA is classified as a self-supporting agency. It must pay for the administrative costs either by leveraging loans, or in the case of the drinking water fund, with no more than 4% of the federal grant money. Each fund requires a state match of 20% to receive the maximum amount of monies for loans. Note that the clean water fund never has received a state match, therefore its 20% has been generated from loan leveraging. However, WIFA has held its administrative costs to approximately 2% of the amount loaned. In the case of the drinking water fund, the legislature authorized \$3.4 million for the 20% state match, but it may not be used for WIFA administrative costs. Finally, the state received \$16.9 million (FY-1996-97) from the federal government.

C. Potential Impacts on Regulated Industry

WIFA concludes this rulemaking will impact the regulated entities identified below as they voluntarily apply for financial assistance to do any of the following: plan, design, construct, improve, acquire, refinance.

- (1) Drinking water facility (A.R.S. § 49-371): a community water system or a nonprofit noncommunity water system, as defined in the Safe Drinking Water Act, excluding water systems owned by federal agencies.

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- (2) Wastewater treatment facility (A.R.S. § 49-371): a facility, as defined in the Clean Water Act, designed to hold, cleanse or purify, or prevent the discharge of untreated or inadequately treated sewage or other polluted waters for purposes of complying with this act.
- (3) Other facility for nonpoint source project (A.R.S. § 49-371): a project designed to implement a certified water quality management plan or the nonpoint source program approved by the United States Environmental Protection Agency pursuant to section 319 of the Clean Water Act. This type of system includes a dairy for example.

The impact to these industries will be in a beneficial manner even though they will experience a relatively minimal cost. Specifically, a regulated industry would obtain a low-interest loan from WIFA based upon a need that impacts human health or the environment. The more immediate adverse affect on human health (for example arsenic in the drinking water), the greater the chance to receive a low-interest loan to correct the problem.

Each regulated industry still needs to correct the problem whether funded by WIFA or lending institution. Therefore, although a cost is incurred by each regulated industry, WIFA believes that the low-interest loan offers a less costly solution to a problem that must be corrected anyway.

D. Social Impacts

This rulemaking is expected to have a very minimal social cost. This is because all application costs by the applicants (that is, political subdivisions or drinking water facilities) are expected to be offset by reduced financing costs for eligible projects. In fact, the application consists of 1 page, and it requires data already available to applicants. Participation also is voluntary, and as such, WIFA expects applicants will apply for low-interest loans (normally ranging from 3-4.5%) only if deemed advantageous to them. Obviously, compliance costs (for example, real-resource, pre-tax compliance costs) do not represent social costs pursuant to this rulemaking. Entities that need to get into compliance with the Clean Water Act and Safe Drinking Water Act must do so with or without this rulemaking. A likely benefit is that such an entity will be in compliance sooner rather than later.

Application costs also include all expenses by applicants to acquire authorization to go into debt (for example, by voter approval, petition, or agreement). These costs could include expenses to form a district. This is necessary because the applicant must demonstrate that it legally is authorized to enter into long-term indebtedness, and it legally is authorized to pledge a dedicated revenue source for repayment of the low-interest loan.

The impact of social cost can be monetized from calculating the various components that comprise social cost. However, because of the nature of this rulemaking, which establishes procedures for applicants to apply for financial assistance, most of these components would not apply. Thus, the social cost represents the total of all real-resource costs to the applicants associated with the application process, less the cost savings to all applicants achieved through low-interest loans and grants from WIFA, and the value of resources used by WIFA to provide financial assistance (\$300,000). This cost savings to applicants is calculated as the difference between what they would have paid through a conventional lending institution and the cost of their low-interest loan or grant obtained through WIFA (\$15,000,000 savings in interest when comparing 4% to 10%).

Social cost does not include resources used by WIFA, as the agency implementing the rule, because once this rulemaking is effective, these rule promulgation costs represent sunk costs. Technically, resources consumed by WIFA, and other regulatory agencies, represent costs to society as opportunity costs, but only costs associated with regulatory administration (for example, activities involving processing, monitoring, permitting, approving, inspecting, and enforcing) should be included in the total social cost. Services or resources supplied by ADEQ are included in WIFA's annual administrative budget for which ADEQ is reimbursed. Thus, ADEQ, as the agency supply resources to promulgate this rule, will not experience increased costs.

WIFA does not foresee any losses resulting from reductions in output of goods or services from this rulemaking. Thus, neither deadweight welfare loss costs due to reductions in output (that is, because no net losses in consumers' and producers' surplus are anticipated) nor other adjustment costs for displaced resources (manifested by potential job losses and business closures) or business/market costs due to certain adverse impacts (for example, effects on product quality, productivity, innovation, and market structure) are anticipated. Furthermore, WIFA does not expect this rulemaking to have an incremental impact on state revenues.

WIFA expects both direct and indirect social benefits to accrue as a result of cost-saving potentials. For example, WIFA's ability to provide low-interest loans to the regulated entities means that construction or repairs previously not affordable can now be accomplished. Although this may appear to be new revenue, it is a revenue-producing activity that already was required, but not completed due to lack of resources. This has the potential to improve the protection of human health and the environment, which previously may not have been achievable. Although WIFA cannot monetize these benefits expected to accrue to society, it does expect the continuation and expansion of this program to have a positive social impact. Probable benefits are expected to outweigh probable costs of this program.

The cost of these projects will be passed-on to consumers, in the form of a rate increase, but in all likelihood, these costs will be less as a direct result of these regulated entities obtaining low-interest loan monies. The savings potential (social benefit) is the difference between principal amortized at a likely higher rate as compared to a lower rate obtainable through WIFA. Refer to Section (J) for cost savings estimates to applicants.

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E. Anticipated Impacts on Employment, Revenues, and Expenditures

This rulemaking is not expected to directly impact short- or even long-run employment, production, or industrial growth. This conclusion applies to both private and public sectors. Because of the nature of this rulemaking, secondary economic effects on employment and other factors (for example, city, town and regional areas, energy, capital availability, and trade) have not been considered in this EIS. Nevertheless, WIFA concludes that this rulemaking will have an indirect impact on expenditures and revenues of regulated entities undertaking these projects, as well as contractors, consulting firms, and other businesses providing assistance for these projects (for example, planning, designing, and constructing) financed by low-interest monies. It should be emphasized that the benefit to these entities (increased revenues) should only be considered as occurring sooner rather than later because these monetary benefits, representing increased costs to wastewater or drinking water facilities or other facilities of nonpoint source projects, are not entirely due to this rulemaking.

F. General Impact on Small Businesses and Reduction of Impacts

WIFA is authorized to provide low-interest loans to small businesses that are drinking water facilities. The primary impact on small businesses is in the form of a benefit by providing low-interest loans that many small businesses may not be able to obtain. Consumers will be impacted because upgrades and repairs of facilities eligible to borrow monies must now commit revenue sources (in the form of income from the consumer) to repay the loans. Although this means the consumer will be faced with an increase in its rate for water or sewerage, the consumer would receive benefits or services that were not provided as a result of the consumer's inability to finance the services. Therefore, some impact is expected to be placed on consumers in the form of increased utility rates to pay for improved service from the utility. WIFA believes the benefit of the improved utility outweighs the cost.

WIFA is targeted to help small businesses and small communities, because those entities are least able to obtain low-interest monies for correcting problems with their drinking water facilities. Therefore the general impact is a greater availability to affordable loans for improving drinking water facilities. Note that wastewater treatment facilities are all political subdivisions; they are excluded from this section.

G. Alternative Rulemaking Provisions

WIFA has the ability to reduce impacts on political subdivisions by forgiving the principal on loans from the drinking water revolving fund. It would be helpful if WIFA could provide forgivable principal to the private sector drinking water facilities, however the Arizona Constitution does not allow subsidy by state government to the private sector. Therefore, forgivable principal as a reduced impact on small business is not a lawful alternative.

WIFA has the ability to pass-on administration costs for the low-interest loans to the regulated entity. To reduce impacts to small business, WIFA currently shares the administrative costs especially with small businesses. WIFA could absorb all administrative costs, however, WIFA is expressly limited to 4% of the aggregate of federal capitalization grants, and the 43rd Legislature disallowed the 1997 appropriation to be used for administering the fund. Therefore, WIFA may not legally absorb all administrative costs to reduce the impact on small business.

WIFA has designed a single page (double sided) application to specifically assist small businesses. WIFA has also reduced the impact of providing information for obtaining a loan specifically to assist small businesses, thereby creating a level playing field for all applicants. For example, if the city of Phoenix applied for a loan, it would probably have information about median household income, statistics on demographics, and other information readily available to inform WIFA about the city. To maintain a level playing field during the application process, WIFA obtains all statistical and demographic information, and any other public information, for the applicant. This minimizes the required effort on small businesses and communities.

H. Probable Costs and Benefits to Political Subdivisions Directly Affected

Political subdivisions directly affected include wastewater treatment and drinking water facilities, as well as other facilities for nonpoint source projects. These facilities are impacted in the same manner as small business because they now would be able to solve problems with lower interest loans, which translates into a benefit to their ratepayers. In the case of a political subdivision that may receive a low-interest loan from the drinking water revolving fund, WIFA may forgive the principal (see the Safe Drinking Water Act). Forgivable principal is done in the form of negative interest. The cost from this decision is a reduction in the revolving fund, but the benefit is expected to be improved compliance and continued operation and maintenance of the system. WIFA does not intend to deplete the revolving fund by loaning it out and then forgiving all of the principal. WIFA intends to use this option in the instance that it can benefit the facility long term and without a negative impact on the fund.

I. Probable Impact to Government Agencies.

The Arizona Corporation Commission (ACC) is expected to be minimally affected by these rules because the private drinking water facilities must request a rate increase from the ACC to ensure repayment of the loan. However, WIFA believes this to be a minimal impact because ACC is trying to streamline the approval process, and political subdivisions must have voter or petitioner authorization to go into debt, therefore the same type of a process exists for any facility that enters into an agreement to borrow and repay low-interest loans with WIFA.

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WIFA pays for ADEQ support and must include this in their administrative support (part of the \$300,000 annual expenditure). It is estimated that approximately a .5 FTE may be needed to analyze technical issues for fundable projects. The cost to ADEQ is a resource, but the benefit is that the resource would be paid for by the federal drinking water grant.

J. Data Limitations

WIFA knows the universe of drinking water facilities, because each regulated facility must submit lab analysis results about the water to ADEQ. It is estimated that there are 1,800 drinking water facilities, of which 49 represent small business. WIFA was able to mail out personal invitations to each known facility for the workshops and the oral proceedings. Due to the attendance of over 400 people, ADEQ believes a number of facilities were reached regarding this rulemaking. Most data were obtained by inquiry of the people invited to the workshops, therefore a representative sample is believed to have been used for making decisions regarding this rulemaking.

Other data limitations include unavailable costs for loan processing (real-resource costs of applicants) and likely cost savings (WIFA loan amortization costs compared to equivalent costs financed through a conventional lending institution). For instance, if \$20 million is obligated at 4% interest compared to 10%, amortized over 10 and 20 years, the resulting savings is calculated at \$15,150,509 and \$16,849,104, respectively (undiscounted). In this example, annual payments represent 5% of the total P&I calculated for each of the 2 terms.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules:

WIFA received no oral comments at the oral proceedings, a few written comments, and comments from the Governor's Regulatory Review Council's staff.

ISSUE: WIFA on its own determined that the Environmental Review Process would be clearer if moved to Article 1 and eliminated from Articles 2, 3, and 4.

ANALYSIS: The Environmental Review Process is required for federal funds to be dispersed. In many instances the Environmental Review is a finding of no significant impact because the types of facilities financed do not discharge, and they typically do not create a new disturbance to the environment. However, it is possible that something as simple as digging a deeper well might require a full environmental assessment. Therefore, WIFA decided it was more efficient to explain the entire Environmental Review process in complete detail in Article 1, and then require the process in each subsequent Article. Each financial agreement is so unique, that the need for the environmental review is not known until the project has been defined.

CONCLUSION: The complete environmental review process, previously in Title 18, Chapter 10 has been inserted into R18-15-107 and removed from R18-15-207, R18-15-307, and R18-15-402 as shown below.

ISSUE: WIFA in conjunction with the GRRC staff determined that the Authority's name did not need to be repeated in the title of Articles 1 and 4.

ANALYSIS: Due to the entire Chapter 15 being titled the Water Infrastructure Finance Authority of Arizona, it is not necessary to repeat the title of the Authority in Articles 1 and 4.

CONCLUSION: Articles 1 and 4 were amended as shown below:

~~ARTICLE 1- WATER INFRASTRUCTURE FINANCE AUTHORITY- MANAGEMENT~~

~~ARTICLE 4- WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA- OTHER FINANCIAL ASSISTANCE~~

ISSUE: WIFA in conjunction with GRRC staff amended all citations to the Clean Water Act, the Safe Drinking Water Act, and the Civil Rights Act for consistency in the United States Code Section.

ANALYSIS: Although there are 2 citations for each federal act, it is clearer to use the Section number that corresponds to the referenced section.

CONCLUSION: All citations in this rule were amended similar to the example shown below:

§ 212 of the Clean Water Act, 33 U.S.C. 1288

§ 1452(e) of the Safe Drinking Water Act, 42 U.S.C. 300(j)(12).

ISSUE: WIFA in conjunction with GRRC staff determined the following definitions were needed in the rule for clarity. The definition of drinking water facility was amended to clarify the types of systems included in the term.

ANALYSIS: WIFA found that some of the readers of this rule were less familiar with common financing terms than the Authority was familiar with. Therefore, to ensure the rule is clear, concise, and understandable, the following definitions were added and amended.

CONCLUSION: R18-15-101 was amended by adding the following:

1. "Acutely toxic" means the ability of a substance to cause poisonous effects resulting in severe biological harm or death after a single exposure or dose.

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11. "Dedicated Source of Repayment" means the source of revenue authorized by the voters, petitioners or the Arizona Corporation Commission to be used to repay the financial assistance.
- ~~1516.~~ "Drinking Water Facility" means a facility pursuant to A.R.S. 49-371 a community water system as defined in R18-4-101, or a nonprofit non-community water system as defined in R18-4-101.
30. "Preconstruction" means any activity that occurs on the project before any physical activity on-site such as the erection, acquisition, alteration, remodeling, improvement, or extension of treatment works, collection lines, distribution lines, or pumps.

ISSUE: WIFA in conjunction with GRRC staff determined that "if applicable" was used in the rule in places where the standard was not clear.

ANALYSIS: WIFA reviewed the need for "if applicable" in the rule, and discovered that in most instances, all the information requested was required in subsection D of Financial Capability. However, in subsection F of Financial Capability, the "if applicable" was rarely required. Therefore, each use of "if applicable" was removed to clarify the requirement.

CONCLUSION: R18-15-103, R18-15-104, R18-15-202, and R18-15-203 were amended as follows (with conforming changes made in Article 3:

R18-15-103. Legal Capability

B. ~~As part of the Board's review of the applicant's legal capability and if requested by the Board:~~

- ~~1.~~ If the applicant is a political subdivision and the long-term indebtedness is authorized through an election, the applicant shall provide all of the following:
- ~~a1.~~ One copy of the sample election ballot and election pamphlet at least 45 days prior to the election.
 - ~~b2.~~ One copy of the governing body resolution calling for the election at least 45 days prior to the election.
 - ~~e3.~~ One copy of the election results following the election.
 - ~~d4.~~ ~~As applicable, an An~~ attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.
- ~~2C.~~ If the applicant is a political subdivision and the long-term indebtedness is authorized through a special taxing district creation process, the applicant shall provide all of the following:
- ~~a1.~~ ~~One copy of all draft documentation, notices, petitions, and related information prior to each step in the special taxing district creation process.~~
 - ~~b.~~ One copy of all final documentation, notices, petitions, and related information at the conclusion of each step in the special taxing district creation process.
 - ~~e2.~~ ~~As applicable, an An~~ attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.
- ~~3D.~~ If the applicant is regulated by the Arizona Corporation Commission, the applicant shall provide all of the following:
- ~~a1.~~ Evidence that the financial assistance from the Authority to the applicant has been authorized by the Arizona Corporation Commission.
 - ~~b2.~~ ~~As applicable, an An~~ attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.
- ~~4E.~~ All other applicants who are not included in subsections (~~1-B~~), (~~2 C~~), and (~~3 D~~) of this Section, shall demonstrate that a majority of the beneficiaries consent to the terms and conditions of the financial assistance. The Board will assist each applicant to devise a process by which this consent is documented.
- ~~6F.~~ Based on the Board's determination of the applicant's legal capability, the Board may recommend modifications to the proposed project or the Board may recommend modifications to the applicant's legal structure and organization.

R18-15-104. Financial Capability

~~F.~~ ~~As applicable, political subdivisions seeking financial assistance shall submit sample election ballots or sample petitions prior to the election authorizing the financial assistance or prior to the completion of proceedings.~~

R18-15-202. Eligibility Requirements for Financial Assistance

~~6B.~~

- ~~910.~~ ~~As applicable for~~ For nonpoint source projects, the applicant shall ensure that the project is consistent with § 319 and Title VI of the Clean Water Act, 33 U.S.C. 1329, 1381 through 1387.

DC. The Board shall provide financial assistance to eligible governmental units for proposed projects in priority order according to the priority list developed pursuant to R18-15-204. If the Board determines that an applicant will not be able to proceed with a project in a manner consistent with the Clean Water Revolving Fund Intended Use Plan, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has been bypassed. The Board shall replace the bypassed project with the next project on the Clean Water Revolving Fund Priority List in rank order that is ready to accept financial assistance.

R18-15-203. Clean Water Revolving Fund Intended Use Plan

A. The Board shall publish an Intended Use Plan for each year in which it anticipates that it will provide financial assistance for eligible projects. At a minimum the Intended Use Plan shall identify the projects by eligible applicant, project name, type of project, type of financial assistance, amount of financial assistance, and estimated interest rates to be charged. The Intended Use Plan shall also identify 1st use and equivalency projects. ~~As applicable, the~~ The Intended Use Plan shall be prepared after providing for public comment and review. When an Intended Use Plan is to be submitted as ~~first 1 of the required documents required~~ to obtain a grant under Title VI of the Clean Water Act, 33 U.S.C. 1381 through 1387, the Intended Use Plan shall include ~~such~~ any additional information as required by federal law.

ISSUE: WIFA in conjunction with GRRC staff determined that "pursuant to" was used in the rule when referring to a standard.

ANALYSIS: "Pursuant to" is more commonly used to reference a mandate found in statute, rather than a statute that creates an authority. Therefore, pursuant to is removed where it was used to mean something else.

CONCLUSION: R18-15-101 is an example of this type of amendment done in the rule.

7. "Clean Water Revolving Fund" means the fund ~~pursuant to~~ established by A.R.S. § 49-374.

ISSUE: WIFA in conjunction with GRRC staff determined that the rule should reflect the new title given the Clerk of the Board.

ANALYSIS: To ensure clarity about the actual person who coordinates the information dispute process found in R18-15-112, the title Clerk needed to be replaced with Executive Director.

CONCLUSION: Clerk was deleted from R18-15-101, and executive director was added. R18-15-112 was amended to change clerk to executive director.

R18-15-101. Definitions

8. "~~Clerk~~" means the ~~Clerk of the Board of the Water Infrastructure Finance Authority of Arizona~~.

20. "Executive Director" means the executive director of the Water Infrastructure Finance Authority of Arizona.

~~R18-15-111~~ R18-15-112. Disputes

A. Any party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken pursuant to this Chapter may file a formal letter of dispute with the ~~Clerk~~ Executive Director. Within 30 days of receipt of a dispute letter, the Authority shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.

B. Any party filing a dispute pursuant to subsection (A) that disagrees with a preliminary decision of the Authority may file a formal letter of appeal with the Board, provided such letter is received by the ~~Clerk~~ Executive Director not more than 15 days after the receipt by the party of the preliminary decision.

C. The Board shall issue a final decision on issues appealed to it pursuant to subsection (B) not more than 60 days after receipt of the appeal.

ISSUE: USEPA Region IX and the University of Arizona noted that the definition of the Department was incorrectly alphabetized.

ANALYSIS: To ensure a rule is "clear, concise, and understandable" the definitions should be contained in 1 section, alphabetized and in compliance with the drafting rules published by the Secretary of State.

CONCLUSION: R18-15-101 was amended to move the Department definition from subsection (13) to subsection (12) as shown below.

BEFORE: ~~13. "Department" means the Arizona Department of Environmental Quality.~~

AFTER: 12. "Department" means the Arizona Department of Environmental Quality.

ISSUE: WIFA in conjunction with GRRC staff determined that some uses of "pursuant to" were more clearly stated in a different manner.

ISSUE: WIFA determined on its own that all citations need to be complete.

ANALYSIS: WIFA corrected each citation to ensure a complete reference is in the rule text.

CONCLUSION: R18-15-101 is an example of a corrected citation. It was amended as shown below:

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2022. "Financial assistance" means the use of monies for any of the purposes identified in R18-15-201, R18-15-301, and R18-15-401.

ISSUE: WIFA in conjunction with the GRRC staff determined that certain grammatical changes enhanced the readability of the rule.

ANALYSIS: Reference to a singular entity written in the 1st person is the style recommended in rule drafting.

CONCLUSION: R18-15-102 was amended as shown below:

R18-15-102. Application Process

- A. ~~Eligible financial assistance recipients~~ An applicant for financial assistance shall apply to the Authority for each type of financial assistance on forms provided by the Authority. After the Board determines that an application is complete and correct, the Authority may enter into a financial assistance agreement with the applicant.

ISSUE: WIFA on its own determined that the applicant needed some protection from compliance and enforcement at the Department to use the need for financial assistance as a tool to issue notice of violations.

ANALYSIS: WIFA discussed this concern with the Director of the Department. Each determined that good public policy is to encourage correction of problems rather than discourage coming forward with the need for financing. Therefore, the Director of the Department committed to using the compliance assistance program as a mechanism to promote compliance. The Director also set a standard for the limitation of the compliance and assistance program when there is an imminent and substantial endangerment to public health and the environment.

CONCLUSION: R18-15-102 is amended by adding subsection E as shown below:

- E. Any confidential information shall be marked with the words "confidential information" on each page of the material containing such information. A claim of confidential information may be asserted for a trade secret or information that, upon disclosure, would harm a person's competitive advantage. The Authority shall not disclose any confidential information.

ISSUE: WIFA in conjunction with the GRRC staff determined some grammatical corrections were needed.

ANALYSIS: Rules must be clear, concise, and understandable to ensure consistent application of them.

CONCLUSION: See the section with the rule changes from proposal to final rule. It contains all grammatical corrections which are throughout the rule.

ISSUE: The time-frame for providing information to the Authority was clarified from 45 days to at least 45 days.

ANALYSIS: To ensure timely receipt of sample ballots and governing body resolutions, WIFA needs the information at least 45 days prior to the election. This allows time for WIFA to make a correction to ensure full disclosure of the financing that requires approval.

CONCLUSION: R18-15-103 was amended as shown below:

- a1. One copy of the sample election ballot and election pamphlet at least 45 days prior to the election.
- b2. One copy of the governing body resolution calling for the election at least 45 days prior to the election.

ISSUE: WIFA in conjunction with GRRC staff corrected the following text to clarify the rule.

ANALYSIS: R18-15-103(B)(4) was amended to write the sentence in 1st person and verify the legal capability of the borrower. R18-15-103(C)(1) was amended to remove the requirement for draft documentation, because a copy of all documents is all that is necessary. "Prior to each step" was removed to show that the documents could all be delivered at 1 time. In practicality, the applicant prefers the Authority perform a check each step of the way.

CONCLUSION: R18-15-103 was amended as shown below:

R18-15-103. Legal Capability

- A. The applicant shall demonstrate that it is legally authorized to enter into long-term indebtedness and legally authorized to pledge the dedicated revenue source of for repayment ~~as defined in required by~~ R18-15-104.
- B. ~~As part of the Board's review of the applicant's legal capability and if requested by the Board:~~
- 1- If the applicant is a political subdivision and the long-term indebtedness is authorized through an election, the applicant shall provide all of the following:
 - a1. One copy of the sample election ballot and election pamphlet at least 45 days prior to the election.
 - b2. One copy of the governing body resolution calling for the election at least 45 days prior to the election.
 - e3. One copy of the election results following the election.
 - e4. ~~As applicable, an~~ An attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.

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~~2C.~~ If the applicant is a political subdivision and the long-term indebtedness is authorized through a special taxing district creation process, the applicant shall provide all of the following:

- ~~a.~~ ~~One copy of all draft documentation, notices, petitions, and related information prior to each step in the special taxing district creation process.~~
- b1. One copy of all final documentation, notices, petitions, and related information at the conclusion of each step in the special taxing district creation process.
- ~~e2.~~ ~~As applicable, an An attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.~~

~~3D.~~ If the applicant is regulated by the Arizona Corporation Commission, the applicant shall provide all of the following:

- a1. Evidence that the financial assistance from the Authority to the applicant has been authorized by the Arizona Corporation Commission.
- ~~b2.~~ ~~As applicable, an An attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.~~

~~4E.~~ All other applicants who are not included in subsections ~~(1-B)~~, ~~(2 C)~~, and ~~(3 D)~~ of this Section, shall demonstrate that a majority of the beneficiaries consent to the terms and conditions of the financial assistance. The Board will assist each applicant to devise a process by which this consent is documented.

~~6E.~~ Based on the Board's determination of the applicant's legal capability, the Board may recommend modifications to the proposed project or the Board may recommend modifications to the applicant's legal structure and organization.

ISSUE: WIFA in conjunction with Region IX determined that project costs should include operation and maintenance costs.

ANALYSIS: A financing authority will need estimated operation, maintenance, and replacement costs when estimating project costs, because the annual expense will impact the facility's ability to repay the loan. Therefore, the additional costs are included to ensure a full and accurate financial condition is disclosed to the authority.

CONCLUSION: R18-15-104 is amended as shown below:

B. The applicant shall provide an estimate of the project costs, including applicable planning, design, and construction costs, as well as estimated annual operation, maintenance, and replacement costs.

ISSUE: WIFA on its own determined that Financial Capability needed clarification about what rates and charges meant, and that a sample ballot was not necessary, and some grammatical changes.

ANALYSIS: WIFA had in subsection F of Financial Capability a requirement for the applicant to submit a sample ballot or petition, if applicable. WIFA has on many occasions helped applicants draft their petitions and ballots, therefore the requirement to submit a sample did not seem necessary. Furthermore, an applicant either has voter, petition, or some form of approval or not.

CONCLUSION: R18-15-104 was amended as follows:

A. The applicant shall identify the a dedicated revenue source ~~of for~~ repayment ~~for of~~ the financial assistance. When determining an applicant's financial capability, the Board shall consider all the following:

- 1. ~~The applicant's collections or receipt of~~ The amount of money collected through the dedicated revenue source for each of the previous 5 fiscal years.
- 2. An estimate of the ~~applicant's collection or receipt of~~ amount of money that will be collected through the dedicated revenue source for the current fiscal year.
- 3. A projection of the ~~applicant's collection or receipt of~~ amount of money that will be collected through the dedicated revenue source ~~in for each of~~ the next 5 fiscal years.

B. The applicant shall provide an estimate of the project costs, including applicable planning, design, and construction costs, as well as estimated annual operation, maintenance, and replacement costs.

C. The applicant shall provide an estimated schedule of required disbursements of the financial assistance.

~~D. As part of the Board's review of the applicant's financial capability and if requested by the Board, the~~ The applicant shall provide the following information:

- 1. One copy of each financial statement, audit, or comprehensive financial statement from the previous 5 fiscal years.
- 2. One copy of each budget, business plan, management plan or financial plan from the previous 3 fiscal years and ~~from~~ the current fiscal year.
- 3. One copy of the proposed budget, business plan, management plan or financial plan for the next fiscal year.
- 4. A summary of current ~~rates and charges~~ fees for drinking or wastewater services including, as applicable, any resolutions passed by the governing body of a political subdivision.

5. The most recent version of the applicant's capital improvement plan or other plan ~~outlining~~ explaining proposed infrastructure investments.

~~F. As applicable, political subdivisions seeking financial assistance shall submit sample election ballots or sample petitions prior to the election authorizing the financial assistance or prior to the completion of proceedings.~~

ISSUE: WIFA in conjunction with GRRC staff determined that R18-15-105 needed grammatical corrections.

CONCLUSION: R18-15-105 was amended as shown below:

- B. ~~As part of the Board's review of the applicant's technical capability and if requested by the Board, the~~ The applicant shall provide the following information:
- C. ~~As part of the Board's review of the applicant's technical capability, the~~ The Board may consider either of the following the applicant's 1. Recent compliance history of the applicant relative, as applicable, to the Clean Water Act, 33 U.S.C. 1251 through 1387, Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25), related Arizona statutes, and related rules, regulations, and policies. 2. ~~The proposed project and the applicant's ability to operate and maintain the project once completed.~~

ISSUE: WIFA in conjunction with GRRC staff determined that R18-15-106 needed grammatical changes.

CONCLUSION: R18-15-106 is amended as follows:

R18-15-106. Managerial and Institutional Capability

- A. The Board shall review each applicant's capability to manage the proposed project.
- B. ~~As part of the Board's review of the applicant's managerial and institutional capability and if requested by the Board, the~~ The applicant shall provide the following information:
1. As applicable, copies of resumes, biographies, years of experience, term of office and related information of the owners, managers, chief elected officials, and governing body members ~~connected to~~ of the applicant.
 2. A list of professional and outside services ~~connected to~~ retained by the applicant and the proposed project.
- C. ~~As part of the Board's review of the applicant's managerial and institutional capability, the~~ The Board may consider either of the following:
1. ~~Recent~~ As applicable, compliance history of the applicant relative, ~~as applicable,~~ to the Clean Water Act, 33 U.S.C. 1251 through 1387, Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25), related Arizona statutes, and related rules, regulations, and policies.
 2. The scope and size of the proposed project and the applicant's ability to manage the project once completed.

ISSUE: R18-15-107 was inserted by combining the information previously found in the Environmental Assessment in 18 A.A.C. 10 and R18-15-207, R18-15-307, and R18-15-402.

ANALYSIS: The requirement to perform an Environmental Impact Statement is contained in the Clean Water Act, and is required for any federal action that may impact the environment. Although WIFA may conclude that these projects are typically a categorical exclusion because an environmental impact is not achievable, the requirement for the review remains. Therefore, WIFA felt the rule was clearer by containing the entire environmental impact statement in section, and providing a cross reference from each article to the process.

CONCLUSION: To see the changes please review the changes from proposal to final rule as noted at the end of this section.

ISSUE: WIFA in conjunction with GRRC staff determined that the following changes clarified R18-15-108.

CONCLUSION: R18-15-108 is a amended as shown below:

~~R18-15-107~~ R18-15-108. Readiness to Proceed

- A. The Board shall review each applicant's readiness to proceed with the proposed project.
- B. ~~As part of the Board's review of the applicant's readiness to proceed, the~~ The Board shall ~~consider use~~ use all of the following ~~levels of readiness to proceed stated below~~ readiness criteria to classify projects (the higher the level number, the more ready to proceed higher the level of readiness):
1. Level 1 -- The applicant has received authorization to enter into long-term indebtedness.
 2. Level 2 --
 - a. The Board has determined ~~the applicant's~~ all of the following:
 - a i. Legal capability pursuant to R18-15-103.
 - b ii. Financial capability pursuant to R18-15-104.

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- e iii. Technical capability pursuant to R18-15-105.
 - d iv. Managerial and institutional capability pursuant to R18-15-106.
 - e b. The applicant has completed the requirement for Level 1. of readiness to proceed.
3. Level 3 --
- a. The plans and specifications have been reviewed and approved by the Department or the Department's designee.
 - b. The applicant has completed the requirements for Levels 1 and 2. of readiness to proceed.
4. Level 4 --
- a. The applicant is in the process of obtaining all applicable permits and approvals required by federal, state, and local authorities.
 - b. The applicant has completed the requirements for Levels 1, 2, and 3. of readiness to proceed.
5. Level 5 --
- a. The applicant has obtained all applicable permits and approvals required by federal, state, and local authorities.
 - b. The applicant has completed the requirements for Levels 1, 2, 3, and 4. of readiness to proceed.
6. Level 6 --
- a. The applicant has received and accepted bids for the project or, with prior approval from the Board, the applicant has commenced construction.
 - b. The applicant has completed the requirements for Levels 1, 2, 3, 4, and 5. of readiness to proceed.
- C. As applicable, until the environmental review process described in ~~R18-15-207, R18-15-307, or R18-15-403~~ R18-15-107 is completed, the Board shall limit payments of financial assistance to preconstruction activity.
- D. Until all applicable permits and approvals required by federal, state, and local authorities are obtained, the Board shall limit payments of financial assistance to preconstruction activity.

ISSUE: WIFA in conjunction with GRRC staff made corrections to the following sections R18-15-109, R18-15-110, R18-15-111, R18-15-112 to improve readability.

CONCLUSION: R18-15-109, R18-15-110, R18-15-111, and R18-15-112 is amended as shown in the section that contains the changes from proposed rule to final rule.

ISSUE: WIFA based upon USEPA's Region IX request clarified the class ranking to ensure everyone knew that "A" was the highest priority.

ANALYSIS: To ensure rules are clear and understandable, all assumptions should be expressly stated in the rule.

CONCLUSION: R18-15-205 was amended as follows:

- B. When the Priority List is required pursuant to subsection (A), the Board shall rank the projects by priority class (alphabetized with A as the highest priority class), priority points, and year.

ISSUE: WIFA in conjunction with GRRC staff found grammatical and cross reference changes to correct in Article 2. Additionally, WIFA determined on its own that an alternative was needed for useful application of multiple surveys that overlapped a project's service area.

ANALYSIS: If multiple surveys are available to determine the possible income from the users, it is in the Board and the applicant's best interest to have accurate data. If the 2 surveys are dispirit in numbers, a choice must be made as to the appropriate data. WIFA believes there is no way to chose the correct data, therefore the rule will allow averaging of the multiple inputs.

CONCLUSION: All grammatical changes to Article 2 are noted at the end of this section. The change to allow for averaging survey information is shown below. This change was applied to R18-15-206.

- J. The Board may use the most recent United States census data to determine the applicant's and the state's median household income. If the Board or the applicant determines that this data is insufficient, an income survey can be conducted the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. by a reliable impartial source. If the applicant's service area is included in more than income area, the Board may use an average of income areas to define the service area's median household income.

ISSUE: WIFA determined on its own that as-built plans should always be submitted to the authority rather than the department.

ANALYSIS: As-built plans and specifications are useful in the public financing to verify the planned construction. This information is now always required for ADEQ approval, but is always needed for WIFA approval.

CONCLUSION: R18-15-207(D) was amended as follows:

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4. As-built plans and specifications shall be submitted to the Department Authority and the recipient.

ISSUE: WIFA in conjunction with Region IX determined that clarification was needed on the types of financial assistance.

ANALYSIS: To ensure that all possible uses of the fund are included in the rule, a general statement that specifies all financial assistance allowed by the Safe Drinking Water Act is included in rule.

CONCLUSION: R18-15-301(A) is amended by qualifying the refinancing option and adding item number 4.

4. Other uses authorized by the Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25).

ISSUE: WIFA in conjunction with GRRC corrected grammar in R18-15-301(C). WIFA in conjunction with USEPA Region IX determined that the use of "may" needed to be replaced with "shall" to show a stronger commitment to assisting small water systems.

CONCLUSION: R18-15-301(C) was amended as follows:

- C. Pursuant to the Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25), 15% of available Drinking Water Revolving Fund financial assistance ~~may be awarded to~~ shall be available solely for drinking water facilities serving fewer than 10,000 persons consistent with the requirements for financial assistance within Article 3.

ISSUE: WIFA in conjunction with the USEPA Region IX determined that R18-15-302(A) needed clarification of the project proposals.

ANALYSIS: The original list was not complete enough to give the applicant notice of all possible financial assistance projects that might be proposed. Therefore, acquisition was included. Additionally the refinancing is only applicable to drinking water facilities that are owned by a political subdivisions.

CONCLUSION: R18-15-302(A) was amended as shown below:

- A. To be eligible to receive financial assistance an applicant shall be a drinking water facility as defined by A.R.S. § 49-371. An applicant may propose a project ~~for any of the following purposes: the planning, design, construction, or refinancing of a drinking water facility; to plan, design, construct, acquire, or improve a drinking water facility, or refinance an eligible drinking water facility.~~

ISSUE: WIFA in conjunction with GRRC made grammatical changes to R18-15-303. WIFA in conjunction with USEPA made changes the Intended Use Plan described in R18-15-303. Region IX of the USEPA clarified the last sentence to ensure additional information required was triggered by federal law.

ANALYSIS: The USEPA determined that the Intended Use Plan needed to include the population of the area served by the project to assist in public comment and review. Additionally, "as applicable" needed to be struck because this is always required. The Region IX comment to amend the last sentence was to ensure specificity about what additional information was required.

CONCLUSION: R18-15-303 was amended as follows:

The Board shall publish an Intended Use Plan for each year in which it anticipates that it will provide financial assistance for eligible projects. At a minimum, the Intended Use Plan shall identify the projects by eligible applicant, project name, type of project, type of financial assistance, amount of financial assistance, population served by the project, and estimated interest rates to be charged. ~~As applicable, the~~ The Intended Use Plan shall be prepared after providing for public comment and review. When an Intended Use Plan is to be submitted as first 1 of the required documents required to obtain a grant under the Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25), the Intended Use Plan shall include ~~such~~ any additional information as required by federal law.

ISSUE: WIFA in conjunction with GRRC staff determined that the "year" referenced R18-15-304(A) was unclear as to what month it began.

ANALYSIS: When specifying dates in a rule, it is necessary to give a reference when referring to a unit of time such as a week, month, or year. In this instance, the year references a 12 month period, whereby the year's beginning date is not a critical factor, but it is critical that a Priority List be adopted every 12 months.

CONCLUSION: R18-15-304 was amended to delete year and replace it with "12-month period" as shown below.

- A. Each year the Board shall adopt the Priority List for the next year. 12-month period.

ISSUE: WIFA in conjunction with the EPA determined that the rule did not expressly state that priority class A was the highest ranking class.

ANALYSIS: To ensure clarity in a rule, when using a ranking or classing system, it is important to identify the highest ranking element of the system.

CONCLUSION: R18-15-304(B) was amended as shown below. R18-15-204 was also amended in the same manner.

- B. When the Priority List is required pursuant to subsection (A), the Board shall rank the projects by priority class (alphabetized with A as the highest priority class), priority points, and year.

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ISSUE: WIFA in conjunction with GRRC staff determined that R18-15-304(F) needed to be amended to remove a redundancy.

ANALYSIS: R18-15-304(C) contains a restatement of what is in R18-15-304(B), therefore it was not necessary to be repeated.

CONCLUSION: R18-15-304(F) was amended by removing the duplicate sentence as shown below.

- F. The Board shall consider all comments submitted in writing prior to the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but prior to the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. ~~The Board shall also consider the criteria identified in subsection (C).~~ The Board shall summarize all of the comments received, prepare responses, and adopt the Priority List to be used to administer the Drinking Water Revolving Fund during the following fiscal year.

ISSUE: WIFA in conjunction with Region IX and the USEPA determined that R18-15-304(G)(2) appeared to state that the Board could alter the priority list to fund other projects needed to sell bonds.

ANALYSIS: The Board is not authorized by the Safe Drinking Water Act to fund projects needed to sell bonds. However, the Arizona Revised Statutes do not disallow this function. Therefore, the Board can fund projects with water quality bonds which are not financed by federal money, but that assist in the overall bond sale. To ensure that EPA understands that the Board would never alter the priority list just for this reason, subsection (G)(1) was amended to remove the reference to needed to support financial arrangements made to sell bonds for state match.

CONCLUSION: R18-15-304(G)(1) was amended as follows:

- G. The Board ~~may~~ shall make additions or modifications to the Priority List when ~~all~~ of the following conditions ~~is~~ are met:
1. The project meets the criteria for Priority Class A specified in R18-15-305(B); ~~and funds 2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects or needed to support financial arrangements made to sell bonds for the state match.~~
 32. The additions or modifications are made by the Board at a public meeting.

ISSUE: WIFA in conjunction with the USEPA determined that although the rule indicates there might be continued work between the Board and the applicant who is on the priority list, this was not expressly stated.

ANALYSIS: It is good public policy for the Board to continue working with unfunded applicants on the project priority list. The needs of the unfunded facilities tend to increase over time rather than diminish. Therefore, WIFA is willing to place in rule a policy of the Board, which is to continue work with unfunded systems.

CONCLUSION: R18-15-304(I) was amended as shown below.

- I. The Board shall retain a project on the Priority List, and work with each system in its assigned priority ranking if it is bypassed pursuant to R18-15-302(D).

ISSUE: WIFA on its own determined that Environmental Assessment should be moved from R18-15-307 to R18-15-107.

ANALYSIS: The cross reference found in R18-15-305(A) has been amended to reflect the consolidation of R18-15-107.

CONCLUSION: The last sentence of R18-15-305(A) was amended as shown below:

The Board may reevaluate project priority classes under R18-15-304(G) if supported by information such as facility plans, feasibility studies, enforcement actions, and environmental reviews conducted under ~~R18-15-307~~ R18-15-107.

ISSUE: WIFA on its own determined that some references to "acute violations" were an inaccurate description of the "type of violation."

ANALYSIS: There are different standards that can be violated in the national primary drinking water standards, of which may include volatile organics or maximum contaminant levels. Contaminants can be categorized into acute (exposure impacts human health) or non-acute (continued exposure impacts human health) types. Therefore, WIFA tried to consistently describe the type of contaminants as acute or non-acute rather than the type of violation of the national primary drinking water standards.

CONCLUSION: R18-15-305(B) and R18-15-305(D) were amended as shown below, including grammatical corrections:

- B. Class A -- The Board may designate a project as Priority Class A if acute contaminants violations of the national primary drinking water standards exist. ~~Acute violations~~ Violations of acute contaminants are either continuous or intermittent violations where a single exposure to a drinking water contaminant can cause severe health effects. The violations shall be documented by official reports, data, or findings of a regulatory authority, ~~and corrective~~ Corrective action or mitigation measures ~~have been shall be~~ initiated as and evidenced by 1 or more of the following:

1. Thru 5. *No Change.*

- D. Class B -- The Board may designate a project as Priority Class B if the goal of the project is to eliminate a ~~non-acute~~ violation of non-acute contaminants of the national primary drinking water standards documented by official reports, data, or findings of a regulatory authority and corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:

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1. Thru 5. *No Change*

ISSUE: WIFA in conjunction with the EPA determined that the Drinking Water State Revolving Fund are not to be financed with federal funds.

ANALYSIS: The Safe Drinking Water Act Amendments specifically exclude financing for growth. When the rule was drafted, (E)(2) was written to describe problems that might be fundable. Therefore, a system that has an unusable source may need a new drinking water facility, which is not growth. Additionally, Class E (described in R18-15-205(G)) was intended to hold the projects that might receive money where WIFA was a conduit. Therefore, this should be in Article 4 rather than Article 3.

CONCLUSION: R18-15-305(E) and R18-15-305(G) were amended as shown below:

E. Class C -- The Board may designate a project as Priority Class C if the goal of the project is to ~~do 1 of the following:~~

- 1- Upgrade or rehabilitate existing delivery capability or existing facility design in accordance with the Safe Drinking Water Act Amendments.
- 2- ~~Construct a new drinking water facility.~~

G. Class E -- The Board may designate a project which does not receive a designation pursuant to subsections (B) through (F) as Priority Class E. ~~if the project is for future growth only or if the project has been financed from another source of long-term indebtedness.~~

ISSUE: WIFA in conjunction with a commenter and GRRC staff determined that the formula found in R18-15-306(A) was easier to follow when the formula variables matched the list of variables.

ANALYSIS: Parallel construction in writing rule text provides a more readable rule.

CONCLUSION: R18-15-306(A) was amended as shown below:

A. The Board shall rank projects within priority classes using priority values obtained from the following formula:

$$PV = \cancel{HC} + \cancel{FS} + \cancel{PF} + \cancel{CR} + \cancel{FC} \quad \underline{HC + CFS + LFC + PYF + CR} \quad \text{where:}$$

ISSUE: WIFA in conjunction with GRRC staff found that grammatical changes were needed for clearer reading in R18-15-306(B).

ANALYSIS: Every rule must be clear, concise, and understandable to ensure approval by the Governor's Regulatory Review Council.

CONCLUSION: R18-15-306(B) was amended as shown below:

B. Health Criteria (HC) -- Whenever the Board determines that a project seeks to correct a violation of the national primary drinking water standards, the Board shall award HC points. The Board shall use ~~documentation requirements specified under Priority Classes A and B as contained in information from documents obtained under~~ R18-15-305(B) and R18-15-305(D) to assign HC points. The Board shall award HC points ~~shall be awarded~~ up to a maximum of 100 points with only 1 set of points awarded as follows:

ISSUE: WIFA in conjunction with the EPA determined that R18-15-306(C) needed clarification on the types of new source capacity and a qualifier for the set-aside money that funds protection of source water.

ANALYSIS: Clear and concise rule drafting is done in the 1st person. This rule is intended to reflect the possible funding the federal and state funds may finance for drinking water facilities. Therefore, the rule needs to be inclusive of all possible facilities, but not be over inclusive when describing a broad category. The rule has been qualified with "eligible" as an adjective to ensure proper disbursement of federal and state funds.

CONCLUSION: R18-15-306(C) was amended as shown below:

C. Condition of ~~Facilities~~ Facility and ~~Sources~~ Source (CFS) -- If an applicant is seeking financial assistance to construct, upgrade, or rehabilitate a drinking water ~~facilities facility~~, the Board shall award CFS points up to a maximum of 125 points as follows:

1. 20 points to secure at least 51% of new eligible source capacity with a renewable sources source or 10 points to secure at least 51% of new eligible source capacity with a nonrenewable source.
2. 20 points to construct, upgrade, or rehabilitate a component of the water treatment facilities facility, other than disinfection equipment.
3. 20 points to upgrade or rehabilitate capacity of an existing eligible storage, pumping, or distribution ~~facilities facility~~.
4. 20 points to upgrade or rehabilitate existing, required disinfection equipment.
5. 15 points to protect an existing water sources source from an existing or future contamination threats threat to be funded from § 300j of the Safe Drinking Water Act.
6. 15 points to upgrade or rehabilitate an existing wells well or spring box.

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7. 10 points to repair an existing transmission or distribution ~~systems~~ system.
8. 5 points to reduce a taste, odor or corrosion ~~problems~~ problem with at an existing ~~facilities~~ facility.

ISSUE: WIFA on its own determined that grammatical corrections were needed to improve the readability of Article 4. Additionally, redundancies were removed (such as political subdivision's reference).

ANALYSIS: Every rule must be clear, concise and understandable to ensure approval by the Governor's Regulatory Review Council.

CONCLUSION: All changes to Article 4 are noted below:

CHANGES FROM PROPOSED TO FINAL RULE ARE NOTED BELOW:

R18-15-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, and 49-371, the terms of this Article, unless otherwise specified, have the following meanings:

1. "Acutely toxic" means the ability of a substance to cause poisonous effects resulting in severe biological harm or death after a single exposure or dose.
- ~~12.~~ "Applicant" means a governmental unit or a drinking water facility that is seeking financial assistance from the authority pursuant to the provisions of this Chapter.
- ~~23.~~ "Application" means a request for financial assistance submitted to the Board, by an applicant.
- ~~34.~~ "Approval to Construct" means the written approval issued by the Department to an applicant or recipient indicating that project construction may begin.
- ~~45.~~ "Authority" means the Water Infrastructure Finance Authority of Arizona pursuant to A.R.S. § 49-371.
- ~~56.~~ "Board" means the board of directors of the authority pursuant to A.R.S. § 49-371.
- ~~67.~~ "Certified Water Quality Management Plan" means a plan prepared by the designated Water Quality Management Planning Agency, pursuant to § 208 of the Clean Water Act, 33 U.S.C. ~~§101 to 607, 1288~~ and certified by the Governor.
- ~~78.~~ "Clean Water Revolving Fund" means the fund ~~pursuant to~~ established by A.R.S. § 49-374.
- ~~8.~~ "Clerk" means the Clerk of the Board of the Water Infrastructure Finance Authority of Arizona.
9. "Collector" means a network of pipes or sewers used to collect and transport wastewater to a treatment plant or disposal system.
10. "Construction" means, for a project, any placement, assembly, or installation of a building, structure, equipment, treatment process, collection lines, distribution lines, pumps, or related drinking water or water pollution control activity.
- ~~11.~~ "Dedicated Source of Repayment" means the source of revenue authorized by the voters, petitioners or the Arizona Corporation Commission to be used to repay the financial assistance.
- ~~12.~~ "Department" means the Arizona Department of Environmental Quality.
- ~~113.~~ "Design life" means the period during which a treatment works or drinking water facility is planned and designed to be operated.
- ~~1214.~~ "Designated Water Quality Management Planning Agency" means a single representative organization designated by the Governor pursuant to § 208 of the Clean Water Act, 33 U.S.C. 1288, to develop a Certified Water Quality Management Plan for the area.
- ~~13.~~ "Department" means the Arizona Department of Environmental Quality.
- ~~1415.~~ "Disbursement" means the transfer of cash from the fund to a recipient.
- ~~1516.~~ "Drinking Water Facility" means a facility pursuant to A.R.S. 49-371 a community water system as defined in R18-4-101, or a nonprofit non-community water system as defined in R18-4-101.
- ~~1617.~~ "Drinking Water Revolving Fund" means the fund pursuant to established by A.R.S. § 49-374.01.
- ~~1718.~~ "EPA" means the United States Environmental Protection Agency and its successor.
- ~~1819.~~ "Equivalency Project" means a wastewater treatment facility under § 212 of the Clean Water Act, 33 U.S.C. 1292, constructed in whole or in part before October 1, 1994, with funds equaling the amount of the federal capitalization grant.
- ~~20.~~ "Executive Director" means the executive director of the Water Infrastructure Finance Authority of Arizona.

1921. "Federal capitalization grant" means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the Clean Water Revolving Fund and the Drinking Water Revolving Fund.
2022. "Financial assistance" means the use of monies for any of the purposes identified in R18-15-201, R18-15-301, and R18-15-401.
2123. "Financial assistance agreement" means any agreement, including a loan repayment agreement, that defines the terms for financial assistance given pursuant to this Article.
2224. "First Use Project" means a project identified by EPA and the state as part of the National Municipal Policy List for the state.
2325. "Governmental unit" means a political subdivision or Indian tribe that may receive financial assistance from the Authority pursuant to A.R.S. § 49-373.
2426. "Infiltration" means water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes.
2527. "Intended Use Plan" means the document prepared by the Authority identifying the intended uses of Clean Water Revolving Fund and Drinking Water Revolving Fund capitalization grants pursuant to R18-15-203 and R18-15-303.
2628. "Interceptor" means a sewer which is designed for 1 or more of the following purposes:
- To intercept wastewater from a final point in a collector and convey such wastes directly to a treatment facility or another interceptor.
 - To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector or interceptor for conveyance to a treatment plant.
 - To transport wastewater from 1 or more municipal collectors to another municipality or to a regional plant for treatment.
 - To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.
2729. "Nonpoint Source Program" means Arizona's Nonpoint Source Program, approved by EPA under § 319 of the Clean Water Act, 33 U.S.C. 1329, for controlling pollution from nonpoint sources.
30. "Preconstruction" means any activity that occurs on the project before any physical activity on-site such as the erection, acquisition, alteration, remodeling, improvement, or extension of treatment works, collection lines, distribution lines, or pumps.
2831. "Priority List" means the ranking of projects developed by the Board pursuant to R18-15-204 and R18-15-304.
2932. "Project" means any distinguishable segment or segments of a wastewater treatment facility, drinking water facility or the Nonpoint Source Program which can be bid separately and for which financial assistance is being requested or provided.
3033. "Project completion" means the date, as determined by the Authority, after consultation with the Department and the applicant or recipient, that operation of the project is initiated or is capable of being initiated, whichever occurs 1st.
3134. "Recipient" means an applicant who has entered into a financial assistance agreement with the Authority.
3235. "Replacement" means obtaining and installing equipment or accessories which are necessary during the design and operation of the drinking water and wastewater infrastructure to maintain the capacity and performance for which such infrastructure were designed and constructed.
3336. "Regulatory authority" means the Department, EPA, the Department of Health Services, a county, city, or other local health department, a county environmental agency, or a sanitary district.
3437. "State match" means the monies that may be used to meet the requirements of § 602(b)(2) of the Clean Water Act, 33 U.S.C. 1382 and 1452(e) of the Safe Drinking Water Act, 42 U.S.C. 300(j)(12).
3538. "Treatment works" means any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement § 201 of the Clean Water Act, 33 U.S.C. 1281, or necessary to recycle or reuse water over the design life of the works.
3639. "User charge" means a charge levied on users of drinking water and wastewater infrastructure.

R18-15-102. Application Process

- A. ~~Eligible financial assistance recipients~~ An applicant for financial assistance shall apply to the Authority for each type of financial assistance on forms provided by the Authority. After the Board determines that an application is complete and correct, the Authority may enter into a financial assistance agreement with the applicant.

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- B. An applicant seeking Clean Water Revolving Fund financial assistance shall apply for financial assistance pursuant to Articles 1 and 2 of this Chapter.
- C. An applicant seeking Drinking Water Revolving Fund financial assistance shall apply for financial assistance pursuant to Articles 1 and 3 of this Chapter.
- D. An applicant seeking other types of financial assistance available through the Water Infrastructure Finance Authority shall apply for financial assistance pursuant to Articles 1 and 4 of this Chapter.
- E. Any confidential information shall be marked with the words "confidential information" on each page of the material containing such information. A claim of confidential information may be asserted for a trade secret or information that, upon disclosure, would harm a person's competitive advantage. The Authority shall not disclose any confidential information.

R18-15-103. Legal Capability

- A. The applicant shall demonstrate that it is legally authorized to enter into long-term indebtedness and legally authorized to pledge the dedicated revenue source ~~of for~~ repayment ~~as defined in required by~~ R18-15-104.
- B. ~~As part of the Board's review of the applicant's legal capability and if requested by the Board:~~
 - ~~1.~~ If the applicant is a political subdivision and the long-term indebtedness is authorized through an election, the applicant shall provide all of the following:
 - a1. One copy of the sample election ballot and election pamphlet at least 45 days prior to the election.
 - b2. One copy of the governing body resolution calling for the election at least 45 days prior to the election.
 - c3. One copy of the election results following the election.
 - d4. ~~As applicable, an~~ An attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.
 - ~~2C.~~ If the applicant is a political subdivision and the long-term indebtedness is authorized through a special taxing district creation process, the applicant shall provide all of the following:
 - a1. ~~One copy of all draft documentation, notices, petitions, and related information prior to each step in the special taxing district creation process.~~
 - b. One copy of all final documentation, notices, petitions, and related information at the conclusion of each step in the special taxing district creation process.
 - e2. ~~As applicable, an~~ An attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.
 - ~~3D.~~ If the applicant is regulated by the Arizona Corporation Commission, the applicant shall provide all of the following:
 - a1. Evidence that the financial assistance from the Authority to the applicant has been authorized by the Arizona Corporation Commission.
 - b2. ~~As applicable, an~~ An attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.
 - 4E. All other applicants who are not included in subsections (1B), (2C), and (3D) of this Section, shall demonstrate that a majority of the beneficiaries consent to the terms and conditions of the financial assistance. The Board will assist each applicant to devise a process by which this consent is documented.
- CF. Based on the Board's determination of the applicant's legal capability, the Board may recommend modifications to the proposed project or the Board may recommend modifications to the applicant's legal structure and organization.

R18-15-104. Financial Capability

- A. The applicant shall identify ~~the a~~ dedicated revenue source ~~of for~~ repayment ~~for of~~ the financial assistance. When determining an applicant's financial capability, the Board shall consider all the following:
 - 1. ~~The applicant's collections or receipt of~~ The amount of money collected through the dedicated revenue source for each of the previous 5 fiscal years.
 - 2. An estimate of the ~~applicant's collection or receipt of~~ amount of money that will be collected through the dedicated revenue source for the current fiscal year.
 - 3. A projection of the ~~applicant's collection or receipt of~~ amount of money that will be collected through the dedicated revenue source ~~in for each of~~ the next 5 fiscal years.
- B. The applicant shall provide an estimate of the project costs, including applicable planning, design, and construction costs, as well as estimated annual operation, maintenance, and replacement costs.

- C. The applicant shall provide an estimated schedule of required disbursements of the financial assistance.
- D. ~~As part of the Board's review of the applicant's financial capability and if requested by the Board, the~~ The applicant shall provide the following information:
1. One copy of each financial statement, audit, or comprehensive financial statement from the previous 5 fiscal years.
 2. One copy of each budget, business plan, management plan or financial plan from the previous 3 fiscal years and ~~from~~ the current fiscal year.
 3. One copy of the proposed budget, business plan, management plan or financial plan for the next fiscal year.
 4. A summary of ~~current rates and charges~~ fees for drinking or wastewater services including, as applicable, any resolutions passed by the governing body of a political subdivision.
 5. The most recent version of the applicant's capital improvement plan or other plan ~~outlining~~ explaining proposed infrastructure investments.
 6. Copies of documentation relating to outstanding indebtedness including official statements, financial assistance agreements, and amortization schedules.
 7. The number of connections to be served by the proposed project.
- E. Based on the Board's determination of the applicant's financial capability and the Board's review of the estimated costs of the project, the Board may recommend modifications to the proposed project or the Board may recommend modifications to the dedicated revenue source.
- F. ~~As applicable, political subdivisions seeking financial assistance shall submit sample election ballots or sample petitions prior to the election authorizing the financial assistance or prior to the completion of proceedings.~~

R18-15-105. Technical Capability

- A. The Board shall review each applicant's technical capability to construct, operate and maintain the proposed project.
- B. ~~As part of the Board's review of the applicant's technical capability and if requested by the Board, the~~ The applicant shall provide the following information:
1. One copy of each feasibility study, engineering report, design memorandum, set of plans and specifications and other technical documentation related to the proposed project.
 2. Copies of resumes, biographies or related information of the certified operators, system employees, or contractors employed by the applicant to operate and maintain the existing facilities and the proposed project.
 3. A description of the service territory including maps.
 4. A description of the existing physical facilities.
- C. ~~As part of the Board's review of the applicant's technical capability, the~~ The Board may consider either of the following the applicant's 1. Recent compliance history of the applicant relative, as applicable, to the Clean Water Act, 33 U.S.C. 1251 through 1387, Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25), related Arizona statutes, and related rules, regulations, and policies. 2. The proposed project and the applicant's ability to operate and maintain the project once completed.
- D. Based on the Board's determination of the applicant's technical capability and the Board's review of the proposed project, the Board may recommend modifications to the proposed project.

R18-15-106. Managerial and Institutional Capability

- A. The Board shall review each applicant's capability to manage the proposed project.
- B. ~~As part of the Board's review of the applicant's managerial and institutional capability and if requested by the Board, the~~ The applicant shall provide the following information:
1. As applicable, copies of resumes, biographies, years of experience, term of office and related information of the owners, managers, chief elected officials, and governing body members ~~connected to~~ of the applicant.
 2. A list of professional and outside services ~~connected to~~ retained by the applicant and the proposed project.
- C. ~~As part of the Board's review of the applicant's managerial and institutional capability, the~~ The Board may consider either of the following:
1. Recent ~~As applicable,~~ compliance history of the applicant relative, ~~as applicable,~~ to the Clean Water Act, 33 U.S.C. 1251 through 1387, Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25), related Arizona statutes, and related rules, regulations, and policies.
 2. The scope and size of the proposed project and the applicant's ability to manage the project once completed.

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- D. Based on the Board's determination of the applicant's managerial capability and the Board's review of the proposed project, the Board may recommend modifications to the proposed project.

R18-15-107. Environmental Review

- A. The Authority shall conduct an environmental review pursuant to this Section for impacts of the design or construction of water infrastructure works in accordance with applicable federal and state law. As part of the application process, the Authority shall request information from the applicant to conduct an environmental review consistent with the Clean Water Act, 33 U.S.C. 1251 to 1387, and A.R.S. Title 49.
- B. If, based on the application and other information submitted by the applicant, the Authority determines that a categorical exemption from an environmental review is warranted, the project is exempt from the requirements of this Section. The Authority shall grant an exemption if existing information and documents demonstrate that the project qualifies under 1 or more of the following categories:
1. Any project which is directed towards rehabilitation of existing facilities, functional replacement of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities which do not affect the degree of treatment or capacity of the existing facility.
 2. Any project in sewerred communities which is for minor upgrading and minor expansion of existing treatment works.
 3. Any project in unsewerred communities where on-site technologies are proposed.
- C. The Authority shall deny an exemption if the project falls under any of the following categories:
1. The project will create a new, or relocate an existing, discharge to surface or ground waters.
 2. The project will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters.
 3. The project is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions.
 4. The project is known or expected to directly or indirectly affect cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones; or other resource areas.
 5. The project is known or expected to cause significant public controversy.
 6. The project is known or expected not to be cost effective.
- D. If the Authority determines that a categorical exemption is not warranted under subsection (B), the applicant shall prepare an Environmental Information Document (EID) in a format prescribed by the Authority. The EID shall be of sufficient scope to allow development of an Environmental Assessment (EA) under subsection (E).
- E. The EA may be conducted by the Authority or by the applicant under the supervision of the Authority and shall include consideration of all of the following factors:
1. For the delineated planning area, the existing environmental conditions relevant either to the analysis of alternatives or to determining the environmental impacts of the proposed project.
 2. The relevant future environmental conditions of the delineated planning area, including the alternative of no action.
 3. The purpose and need for the project in the planning area, including the existing public health or water quality problems and their severity and extent.
 4. A comparative analysis of feasible alternatives, including no action, throughout the project area. The comparison shall focus on the beneficial and adverse consequences, both direct and indirect, on the existing environment, the future environment, and individual sensitive environmental issues that are identified by project management or through public participation conducted under this Section. The comparison shall also include an analysis of all of the following factors:
 - a. Land use and other social parameters, including recreation and open-space considerations.
 - b. Consistency with population projects used to develop state implementation plans under the Clean Air Act, 42 U.S.C. 7401 to 7671.
 - c. Cumulative impacts, including anticipated community growth within the project study area.
 - d. Other anticipated public works projects, including coordination with such projects.
 5. A full range of relevant impacts of the project, including any irreversible or irretrievable commitments of resources to the project and the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity.

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6. Proposed structural and nonstructural measures to mitigate or eliminate adverse effects on the human and natural environments. Among other measures, structural provisions include changes in project design, size, and location; and nonstructural provisions include staging facilities, monitoring and enforcement of environmental rules, and local commitments to develop and enforce land use rules.
- F. Upon completion of the EA required by subsection (E), the Authority shall determine whether an environmental impact statement (EIS) is necessary.
 1. The Authority shall prepare an EIS pursuant to subsection (G) if any of the following conditions exist.
 - a. The project is known or expected to have a significant adverse effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions.
 - b. The project is known or expected to directly or indirectly adversely affect recognized cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones, or other resource areas.
 - c. The project is likely to cause significant public controversy or is known or expected not to be cost effective.
 - d. The project discharges into a body of water where the present protected or designated use is not being met or is being challenged as inadequate to protect existing uses, and the discharge will not be of sufficient quality or quantity to meet the requirements of these uses.
 2. If the Authority determines, pursuant to subsection (F)(1), that an EIS is not necessary, the Authority shall issue a finding of no significant impact (FNSI). The FNSI shall be accompanied by the submitted EA with an attached memorandum from the Authority explaining any changes made to the submitted document. Upon issuance of the FNSI, the project may proceed under the other requirements of this Article.
- G. An EIS required by subsection (F)(1) shall be prepared as follows:
 1. The Authority shall 1st prepare and distribute a Notice of Intent.
 2. As soon as possible after the publication of the Notice of Intent required by subsection (G)(1), the Authority shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the applicant, and other interested parties. At the meeting, the scope of the EIS shall be determined by considering a number of factors, including all of the following:
 - a. The significant issues to be analyzed in depth in the EIS.
 - b. The preliminary range of alternatives to be considered.
 - c. The potential cooperating agencies and information or analyses that may be needed from cooperating agencies or other parties.
 - d. The method for EIS preparation and the public participation strategy.
 3. Upon completion of the process described in subsection (G)(2), the Authority shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified. Additional issues may also be addressed, or others eliminated, and the reasons documented as part of the EIS.
 4. After the analysis of issues is conducted pursuant to subsection (G)(3), the Authority shall issue a draft EIS for public comment. Following public comment pursuant to subsection (J), the Authority shall prepare a final EIS, consisting of all of the following:
 - a. The draft EIS.
 - b. Comments received on the draft EIS.
 - c. A list of persons commenting on the draft EIS.
 - d. The Authority's responses to significant comments received.
 - e. A determination of consistency with the Certified Water Quality Management Plan.
 - f. Any other information added by the Authority.
- H. After a final EIS has been issued under subsection (G), the Authority shall prepare and issue a record of decision (ROD) containing the Authority's decision whether to proceed or not proceed with a project. A ROD issued with a decision to proceed shall include mitigation measures derived from the EIS process. A ROD issued with a decision not to proceed shall preclude the project from receiving financial assistance under this Article.
- I. Any project awaiting financial assistance which has a 5 or more year-old categorical exclusion, FNSI, or ROD under this Section shall be subject to an environmental reevaluation. The Authority shall reevaluate the project, environmental conditions, and public views and, in writing, either reaffirm or modify its original decision. Any new information used by the Authority in making its determination shall be included.

J. Public notice and participation under this Section shall be conducted as follows:

1. If a categorical exclusion is granted under subsection (B), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned.
2. If a FNSI is issued under subsection (F)(2), the Authority shall provide public notice pursuant to R18-1-401(A) that the FNSI is available for public review. The notice shall provide that comments on the FNSI may be submitted to the Authority for a period of 30 days from the date of publication of the notice. If no comments are received, the FNSI shall immediately become effective.
3. If a Notice of Intent is prepared and distributed under subsection (G)(1), the Authority shall publish it as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned.
4. If a draft EIS is issued under subsection (G)(4), the Authority shall provide public notice pursuant to A.A.C. R18-1-401(A) that the draft EIS is available for public review. The notice shall provide that comments on the draft EIS may be submitted to the Authority for a period of 30 days from the date of publication of the notice. In addition, if the Authority determines that a project may be controversial, the notice shall provide for a general public hearing to receive public comment pursuant to A.A.C. R18-1-401(B).
5. If the Authority reaffirms or revises a decision pursuant to subsection (I) of this Section, the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned.
6. When public notice is required under this subsection, the Authority shall also provide written notice to the applicable Designated Water Quality Management Planning Agency.

~~R18-15-107~~ R18-15-108. Readiness to Proceed

A. The Board shall review each applicant's readiness to proceed with the proposed project.

B. ~~As part of the Board's review of the applicant's readiness to proceed, the~~ The Board shall consider use all of the following levels of readiness to proceed stated below readiness criteria to classify projects (the higher the level number, the more ready to proceed higher the level of readiness):

1. Level 1 -- The applicant has received authorization to enter into long-term indebtedness.
2. Level 2 --
 - a. ~~The Board has determined the applicant's all of the following:~~
 - a i. Legal capability pursuant to R18-15-103.
 - b ii. Financial capability pursuant to R18-15-104.
 - c iii. Technical capability pursuant to R18-15-105.
 - d iv. Managerial and institutional capability pursuant to R18-15-106.
 - e b. The applicant has completed the requirement for Level 1. of readiness to proceed.
3. Level 3 --
 - a. The plans and specifications have been reviewed and approved by the Department or the Department's designee.
 - b. The applicant has completed the requirements for Levels 1 and 2. of readiness to proceed.
4. Level 4 --
 - a. The applicant is in the process of obtaining all applicable permits and approvals required by federal, state, and local authorities.
 - b. The applicant has completed the requirements for Levels 1, 2, and 3. of readiness to proceed.
5. Level 5 --
 - a. The applicant has obtained all applicable permits and approvals required by federal, state, and local authorities.
 - b. The applicant has completed the requirements for Levels 1, 2, 3, and 4. of readiness to proceed.
6. Level 6 --
 - a. The applicant has received and accepted bids for the project or, with prior approval from the Board, the applicant has commenced construction.
 - b. The applicant has completed the requirements for Levels 1, 2, 3, 4, and 5. of readiness to proceed.

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- C. As applicable, until the environmental review process described in ~~R18-15-207, R18-15-307, or R18-15-403~~ R18-15-107 is completed, the Board shall limit payments of financial assistance to preconstruction activity.
- D. Until all applicable permits and approvals required by federal, state, and local authorities are obtained, the Board shall limit payments of financial assistance to preconstruction activity.

~~R18-15-108~~ R18-15-109. Interest Rate Determinations

- A. In establishing interest rates for financial assistance made under this Chapter, the Authority:
 - 1. Shall consider the interest rate on bonds issued by the Authority, prevailing market rates, the recommendations of financial advisors, equity growth, and asset growth;
 - 2. Shall not establish a rate which exceeds prevailing market rates for similar types of financial assistance;
 - 3. Shall not establish a rate which is less than is needed to retire the Authority's bonds.
- B. ~~As required, interest rate determinations will be made~~ The Authority shall establish interest rates on a loan by loan basis. ~~as defined by Authority policy. Such policy determinations~~ shall be adopted and amended as required by the Board at public meetings of the Board.

~~R18-15-109~~ R18-15-110. Disbursements and Repayments

- A. The Authority shall ensure that disbursements are consistent with the financial assistance agreement and incurred project expenses.
- B. The Authority shall charge a late fee for any loan repayment 30 days past the due date and every 30 days thereafter. The authority shall refer any loan repayment over 90 days past due to the Office of the Attorney General for appropriate action pursuant to A.R.S. § 49-375(J).
- C. The recipient shall maintain a project account in accordance with generally accepted government accounting standards. After reasonable notice by the Board, the recipient shall make available any project records reasonably required to determine compliance with the provisions of this Article and the financial assistance agreement.

~~R18-15-110~~ R18-15-111. Administration

- A. The Board may use up to 4% of federal capitalization grant awards to pay the reasonable costs of administering the Clean Water Revolving Fund and the Drinking Water Revolving Fund.
- B. The Board may also require a recipient to pay a proportionate share of the expenses of the Authority's operating costs.

~~R18-15-111~~ R18-15-112. Disputes

- A. Any party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken pursuant to this Chapter may file a formal letter of dispute with the ~~Clerk~~ Executive Director. Within 30 days of receipt of a dispute letter, the Authority shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.
- B. Any party filing a dispute pursuant to subsection (A) that disagrees with a preliminary decision of the Authority may file a formal letter of appeal with the Board, provided such letter is received by the ~~Clerk~~ Executive Director not more than 15 days after the receipt by the party of the preliminary decision.
- C. The Board shall issue a final decision on issues appealed to it pursuant to subsection (B) not more than 60 days after receipt of the appeal.

ARTICLE 2: CLEAN WATER REVOLVING FUND

R18-15-201. Types of Financial Assistance Available

- A. The Authority may use the Clean Water Revolving Fund for any of the following purposes:
 - 1. Financial assistance, which includes any of the following:
 - a. Loans consistent with § 603(d)(1) of the Clean Water Act, 33 U.S.C. 1383;
 - b. The purchase or refinance of local debt obligations which were incurred after March 7, 1985, if building began after that date;
 - c. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;
 - d. Security as a source of repayment of principal and interest on bonds issued by the Authority provided that the net proceeds of the bonds are deposited in the fund;
 - e. Guarantees of debt obligations by governmental units which are issued to finance eligible projects.
 - 2. Investments to earn interest to be deposited into the fund.

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3. Payments of costs to administer the fund.
- B. The Board shall describe projects and proposed financial assistance in the Clean Water Revolving Fund Intended Use Plan, developed pursuant to R18-15-203.

R18-15-202. Eligibility Requirements for Financial Assistance

- A. To be eligible to receive financial assistance an applicant shall propose a project for either of the following purposes: to: design, construct, acquire, improve or refinance a publicly owned wastewater treatment facility or projects listed on the Nonpoint Source Management Plan.
 1. ~~The planning, design, construction, or refinancing of treatment works which are all or part of a wastewater treatment facility owned by a governmental unit.~~
 2. ~~Water pollution control and water quality projects which are not included in subsection (A)(1).~~
- B. A project eligible under subsection (A) shall also meet all of the following applicable requirements prior to receiving financial assistance:
 1. The project shall appear on the Clean Water Revolving Fund Priority List developed pursuant to R18-15-204.
 2. The applicant shall demonstrate legal capability pursuant to R18-15-103.
 3. The applicant shall demonstrate financial capability pursuant to R18-15-104.
 4. The applicant shall demonstrate technical capability pursuant to R18-15-105.
 5. The applicant shall demonstrate managerial and institutional capability pursuant to R18-15-106.
 6. The applicant shall demonstrate completion of the environmental review process pursuant to R18-15-107.
 67. The applicant shall demonstrate readiness to proceed pursuant to ~~R18-15-107~~ R18-15-108.
 78. The applicant shall obtain or be in the process of obtaining all permits and approvals required by federal, state, and local authorities.
 89. The applicant shall ensure that the project is consistent with the Certified Water Quality Management Plan.
 910. ~~As applicable for~~ For nonpoint source projects, the applicant shall ensure that the project is consistent with § 319 and Title VI of the Clean Water Act, 33 U.S.C. 1329, 1381 through 1387.

DC. The Board shall provide financial assistance to eligible governmental units for proposed projects in priority order according to the priority list developed pursuant to R18-15-204. If the Board determines that an applicant will not be able to proceed with a project in a manner consistent with the Clean Water Revolving Fund Intended Use Plan, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has been bypassed. The Board shall replace the bypassed project with the next project on the Clean Water Revolving Fund Priority List in rank order that is ready to accept financial assistance.

R18-15-203. Clean Water Revolving Fund Intended Use Plan

- ~~A.~~ The Board shall publish an Intended Use Plan for each year in which it anticipates that it will provide financial assistance for eligible projects. At a minimum the Intended Use Plan shall identify the projects by eligible applicant, project name, type of project, type of financial assistance, amount of financial assistance, and estimated interest rates to be charged. The Intended Use Plan shall also identify 1st use and equivalency projects. ~~As applicable, the~~ The Intended Use Plan shall be prepared after providing for public comment and review. When an Intended Use Plan is to be submitted as first 1 of the required documents required to obtain a grant under Title VI of the Clean Water Act, 33 U.S.C. 1381 through 1387, the Intended Use Plan shall include ~~such~~ any additional information as required by federal law.

R18-15-204. Clean Water Revolving Fund Priority List

- A. Each year the Board shall adopt the Priority List for the next year 12-month period. The Board shall not adopt a new list for years where funds are not adequate to assist any projects.
- B. When the Priority List is required pursuant to subsection (A), the Board shall rank the projects by priority class (alphabetized with A as the highest priority class), priority points, and year.
- C. ~~Applicants~~ An applicant, desiring placement on the Priority List, shall make ~~their~~ its request for placement of 1 or more proposed projects on or before a date specified by the Board. When requesting placement on the Priority List, an applicant shall submit information within an application format specified by the Board.
- D. The Board shall prepare a draft Priority List. In developing a draft Priority List, the Board shall consider all requests submitted under subsection (C), all requests made by regulatory authorities, all plans prepared pursuant to the Clean Water Act, 33 U.S.C. 1251 through 1387, and the most recently adopted Priority List.

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- E. The Board shall hold a public meeting to receive comments on the draft Priority List. The Board shall publish a notice of the public meeting in newspapers statewide at least 21 days prior to the meeting date and make copies of the draft Priority List available to the public at least 14 days prior to the meeting date.
- F. The Board shall consider all comments submitted in writing prior to the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but prior to the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. ~~The Board shall also consider the criteria identified in subsection (C).~~ The Board shall summarize all of the comments received, prepare responses, and adopt the Priority List to be used to administer the Clean Water Revolving Fund during the following fiscal year.
- G. The Board shall make additions or modifications to the Priority List ~~whenever any~~ when 1 or more of the following conditions are met:
 - 1. The project meets the criteria for Priority Class A specified in R18-15-205(B).
 - 2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects or needed to support financial arrangements made to sell bonds for the state match.
 - 3. The additions or modifications are made by the Board at a public meeting.
- H. After an opportunity for public comment at a public meeting, the Board may remove a project from the Priority List under any 1 of the following circumstances:
 - 1. The project has received all financial assistance from the fund requested by the applicant.
 - 2. The project has been financed with long-term indebtedness from another source.
 - 3. The project is no longer an eligible project.
 - 4. The applicant requests removal.
- I. The Board shall retain a project on the Priority List in its assigned priority ranking if it is bypassed pursuant to ~~R18-15-202(D)~~ R18-15-202(C).

R18-15-205. Clean Water Revolving Fund Priority Classes

- A. The Board shall evaluate each project on the Priority List and place it into a priority class. The Board may place major portions of a project into different priority classes. The Board shall consider separation of a project into different priority classes when requested by the applicant or when the Board determines that available funds are inadequate to provide assistance to projects critical to the public health or to water quality. The Board may reevaluate project priority classes under R18-15-204(G) when supported by information such as facility plans, feasibility studies, enforcement actions, and environmental reviews conducted under ~~R18-15-207~~ R18-15-107. If the Board determines that the problem being addressed by a project can be corrected by proper operation and maintenance of existing facilities, the project is ineligible for financial assistance.
- B. Class A -- The Board may designate a project as Priority Class A if both the following conditions exist:
 - 1. The goal of the project is to eliminate either of the following:
 - a. An environmental nuisance as defined in A.R.S. § 49-141.
 - b. A public health hazard declared by a regulatory authority.
 - 2. Corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:
 - a. An administrative order issued by a regulatory authority.
 - b. A court order or decision.
 - c. A voluntary compliance agreement with a regulatory authority.
 - d. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
 - e. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.
- C. Class A: Continuing Construction Projects -- In addition to R18-15-205(B), the Board may designate a project as Priority Class A if the project received funding in a prior fiscal year, the Board entered into a multi-fiscal year funding commitment with the applicant, and the project received at least 20 points under R18-15-206(H).
- D. Class B -- The Board may designate a project as Priority Class B if the goal of the project is to eliminate a violation of water quality standards documented by official reports, data, or findings of a regulatory authority and corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:
 - 1. An administrative order issued by a regulatory authority.

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2. A court order or decision.
 3. A voluntary compliance agreement with a regulatory authority.
 4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
 5. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.
- E. Class C -- The Board may designate a project as Priority Class C if the goal of the project is to correct water quality which violates applicable permit requirements. The Board shall ensure that the violations are documented by required or special monitoring reports which confirm that the discharge limits for a parameter were exceeded either 3 consecutive months during the past year or any 4 months during the past year.
- F. Class D -- The Board may designate a project as Priority Class D if any 1 of the following conditions exists:
1. The project will provide capacity required to serve existing needs.
 2. The project is designed for wastewater reuse, to conserve water, or to recharge wastewater.
 3. The project is necessary to remedy interceptors which are overloaded.
- G. Class E -- The Board may designate a project which does not receive a designation pursuant to subsections (B) through (E) as Priority Class E, if the project is for future growth only or if the project has been financed from another source of long-term indebtedness.

R18-15-206. Clean Water Revolving Fund Priority List Ranking Criteria

- A. The Board shall rank projects within priority classes using priority values obtained from the following formula:

$PV = VF + TD + CL + CW + CI + LFC + PYF + CR$ where:

PV = Priority Value

VF = Violation Factor

TD = Treatment and Disposal

CL = Collection Lines

CW = Classification of Waters

CI = Conservation Index

LFC = Local Fiscal Capacity

PYF = Prior Year Funding

CR = Consolidation and Regionalization

- B. Violation Factor (VF) -- Whenever the Board determines that a project seeks to correct a violation of a water quality standard or a violation of a condition contained in a valid water quality permit issued by a regulatory authority, the Board shall award VF points. The Board shall use ~~documentation requirements specified under Priority Classes A and B as contained in information from documents obtained under R18-15-205(B) and R18-15-205(D)~~ to assign VF points. VF points ~~shall be~~ are awarded as follows up to a maximum of 100 points:
1. 40 points for nitrates, disease organisms or indicators, or conditions which create a threat to an endangered species.
 2. 30 points for pathogens, heavy metals, and volatile organic compounds (VOC's).
 3. 20 points for biochemical oxygen demand (BOD), suspended solids, or phosphates.
 4. 10 points for pH, turbidity, or temperature.
- C. Treatment and Disposal (TD) -- If an applicant is seeking financial assistance to construct, upgrade, or rehabilitate a treatment or disposal process, the Board shall award TD points up to a maximum of 30 points with only 1 set of points awarded as follows:
1. 30 points to provide additional treatment capacity to meet existing need.
 2. 30 points to construct new treatment capacity for an unsewered area.
 3. 25 points to provide additional disposal capacity.
 4. 20 points to upgrade treatment facilities to more stringent standards.
 5. 15 points to ~~which will relieve~~ remedy existing design inadequacies.
 6. 10 points for projects which will resolve existing operation and maintenance violations.

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7. 5 points for projects which will expand treatment capacity to accommodate future growth.
- D. Collection Lines (CL) -- If an applicant is seeking financial assistance for a collection line project, the Board shall award CL points up to a maximum of 30 points with only 1 set of points awarded as follows:
 1. 30 points to extend service to an existing unsewered area where a documented water quality standard violation exists.
 2. 25 points to repair, rehabilitate or replace existing collection lines.
 3. 20 points to extend service to an existing unsewered area.
 4. 15 points to replace collection lines to accommodate existing growth.
 5. 5 points to install new collection lines to accommodate future growth.
- E. Classification of Waters (CW) -- The Board shall award points for either surface water or groundwater categories but not both. The most stringent protected use within each category shall be the sole determiner of the CW points. CW points are awarded as follows up to a maximum of 30 points:
 1. For surface water, CW points shall be awarded for discharges into a water body assigned 1 of the following protected use classifications under R18-11-101:
 - a. 30 points for "full body contact" or "domestic water source." For purposes of this subsection, a project that is not within either of those classifications may receive 30 points if the discharge is into a water body classified as a "unique water" defined in R18-11-101.
 - b. 20 points for "aquatic and wildlife--(cold water fishery)".
 - c. 15 points for "aquatic and wildlife" that is not a cold water fishery.
 - d. 10 points for "incidental human contact".
 2. For groundwater, CW points shall equal 30 points for discharges into an aquifer.
- F. Conservation Index (CI) -- The Board shall award Conservation Index points up to a maximum of 45 points as follows:
 1. 30 points if the project will ~~replace an existing groundwater use by reclaiming, reusing~~ reclaim, reuse, or recharging recharge at least 51% of treated wastewater consistent with state law.
 2. 15 points if the project will productively recycle wastewater constituents ~~or recover energy~~.
 3. 0 points if the project will not reclaim, reuse, or recharge wastewater.
- G. Local Fiscal Capacity (LFC) -- The Board shall award LFC points up to a maximum of 100 points as follows:
 1. Median Household Income (MHI) -- The Board shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:
 - a. 40 points if the area's MHI is less than 25% of the State's MHI.
 - b. 30 points if the area's MHI is between 25% and 50% of the State's MHI.
 - c. 20 points if the area's MHI is between 51% and 75% of the State's MHI.
 - d. 10 points if the area's MHI is between 76% and 100% of the State's MHI.
 - e. 0 points if the areas's MHI is more than 100% of the State's MHI.
 2. User Fees -- The Board shall divide the applicant's proposed residential user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:
 - a. 20 points if the rates are more than 2% of the area's MHI.
 - b. 10 points if the rates are between 1% and 2% of the area's MHI.
 - c. 0 points if the rates area is less than 1% of the area's MHI.
 3. Investment -- The Board shall divide existing indebtedness, existing investments, and proposed indebtedness by the service area's MHI (Investment/Service Area MHI) to award points ~~based~~ as follows:
 - a. 20 points if the existing and proposed investment is more than 1% of the area's MHI.
 - b. 10 points if the existing and proposed investment is between .5% and 1% of the area's MHI.
 - c. 0 points if the existing and proposed investment is less than .5% of the area's MHI.
 4. Cost Effectiveness (CE) -- The Board shall divide the estimated costs of construction by the number of benefitting connections (Construction Costs/# of Benefitting Connections) to award ~~only 1 of the following set of points awarded~~ as follows:
 -

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- a. 20 points if CE is less than \$2,500 per benefitting connection.
 - b. 10 points if CE is between \$2,500 and \$5,000 per benefitting connection.
 - c. 0 points if CE is more than \$5,000 per benefitting connection.
- H. Prior Year Funding (PYF) -- The Board shall award PYF points up to a maximum of 30 points with only 1 of the following set of points awarded as follows:
1. 30 points if the applicant ~~is requests~~ additional financial assistance for a multi-year construction project which received financial assistance from the Authority in a previous fiscal year.
 2. 20 points if the applicant requests additional financial assistance to offset actual costs or justified overruns.
 3. 10 points if the applicant requests financial assistance to construct a project which received planning and design financial assistance from the Authority in a previous fiscal year.
 4. -10 points if the applicant requests financial assistance to offset cost overruns.
- I. Consolidation & Regionalization (CR) -- The Board shall award CR points up to a maximum of 50 points as follows:
1. 20 points if the applicant is consolidating the physical facilities of existing multiple facilities.
 2. 20 points if the applicant is extending service to existing areas currently served by another facility.
 3. 5 points if the applicant is consolidating the operations of existing multiple facilities.
 4. 5 points if the applicant is consolidating the ownership of existing multiple facilities.
- J. The Board may use the most recent United States census data to determine the applicant's and the state's median household income. If the Board or the applicant determines that this data is insufficient, ~~an income survey can be conducted the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. by a reliable impartial source. If the applicant's service area is included in more than income area, the Board may use an average of income areas to define the service area's median household income.~~

~~R18-15-207. Environmental Review~~

Moved to Article 1.

~~R18-15-208~~ ~~R18-15-207.~~ Project Construction

- A. The Department shall not issue an Approval to Construct to an applicant or recipient until all of the following have occurred:
1. An on-site inspection by the Department.
 2. The development by the applicant or recipient of a sludge management use and disposal plan.
 3. A review of all setback requirements by the Department.
- B. Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:
1. All easements and rights-of-way have been obtained.
 2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. § 41-2501 et seq.
 3. All required approvals and permits have been obtained from the following entities:
 - a. The Department including the requirements contained in 18 A.A.C. 9.
 - b. Applicable federal, state, and local authorities as related to:
 - (1) Leases.
 - (2) Zoning permits.
 - (3) Building permits.
 - (4) Flood plain approvals.
 - (5) Air quality permits.
 - (6) Solid waste approvals.
- C. During construction of wastewater treatment facilities, the recipient shall do all the following:
1. Conduct work in compliance with the requirements of 18 A.A.C. 9.

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2. Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.
- D. Upon project completion, all of the following requirements shall be satisfied:
 1. The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 9.
 2. The recipient shall accept the project in writing.
 3. Any required operation and maintenance manual shall be completed.
 4. As-built plans and specifications shall be submitted to the Department Authority and the recipient.
- E. Within 1 year after project completion, the recipient shall certify that the wastewater treatment facility meets design specifications and all effluent limitations. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the wastewater treatment facility does not meet design standards or effluent limits and what will be done to correct the deficiency, together with a schedule for the corrective actions.

R18-15-209 R18-15-208. Clean Water Revolving Fund Requirements

- A. The Board shall identify Clean Water Revolving Fund requirements applicable to each project pursuant to the Clean Water Act, 33 U.S.C. 1251 through 1387.
- B. If applicable, the applicant shall design a user charge system to produce adequate revenues for operation and maintenance, including replacement. The user charge system shall provide that a user discharging pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay proportionately for the increased cost. An applicant's user charge system, based on actual or estimated use of wastewater treatment services, shall provide that each user or user class pays its proportionate share of operation and maintenance, including replacement costs of treatment works within the applicant's service area, based on the user's proportionate contribution to the total wastewater loading from all users or user classes.
- C. After a project is completed, the governmental unit shall use revenue from the project, including the sale of sludges, gases, liquids, crops, or revenue from leases, to offset the costs of operation and maintenance.
- D. The applicant shall certify that it has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kick-backs, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning or design work on a wastewater treatment facility project.
- E. First use and equivalency projects shall comply with the provisions of the Civil Rights Act of 1964, Pub. L. 88-352, 42 U.S.C. 2000(a) through 2000(h)(6), and all other applicable federal laws.

ARTICLE 3: DRINKING WATER REVOLVING FUND

R18-15-301. Types of Financial Assistance Available

- A. The Authority may use the Drinking Water Revolving Fund for any of the following purposes:
 1. Financial assistance, which includes any 1 of the following:
 - a. Loans consistent with § 1452(a)(2)(f) of the Safe Drinking Water Act, 42 U.S.C. 300(j)(12).
 - b. The purchase or refinance of local debt obligations of political subdivisions which were incurred after July 1, 1993 if building began after that date.
 - c. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates.
 - d. Security as a source of repayment of principal and interest on bonds issued by the Authority provided that the net proceeds of the bonds are deposited in the fund.
 - e. Guarantees of debt obligations by governmental units which are issued to finance eligible projects.
 2. Investments to earn interest to be deposited into the fund.
 3. Payments of costs to administer the fund.
 4. Other uses authorized by the Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25).
- B. The Board shall describe projects and proposed financial assistance in the Drinking Water Revolving Fund Intended Use Plan, developed pursuant to R18-15-303.
- C. Pursuant to the Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25), 15% of available Drinking Water Revolving Fund financial assistance ~~may be awarded to~~ shall be available solely for drinking water facilities serving fewer than 10,000 persons consistent with the requirements for financial assistance within Article 3. On an annual basis, if there are insufficient requests for Drinking Water Revolving Fund financial assistance from drinking water facilities serving fewer than 10,000 persons, the Board may direct the remainder of the 15% to all other drinking water facilities requesting financial assistance consistent with the requirements within Article 3.

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R18-15-302. Eligibility Requirements for Financial Assistance

- A. To be eligible to receive financial assistance an applicant shall be a drinking water facility as defined by A.R.S. § 49-371. An applicant ~~may~~ shall propose a project for ~~any of the following purposes: the planning, design, construction, or refinancing of a drinking water facility; to plan, design, construct, acquire, or improve a drinking water facility, or refinance an eligible drinking water facility.~~
- B. A project eligible under subsection (A) shall also meet all of the following ~~applicable~~ requirements prior to receiving financial assistance:
1. The project shall appear on the Drinking Water Revolving Fund Priority List developed pursuant to R18-15-304.
 2. The applicant shall demonstrate legal capability pursuant to ~~R18-15-203~~ R18-15-103.
 3. The applicant shall demonstrate financial capability pursuant to R18-15-104.
 4. The applicant shall demonstrate technical capability pursuant to R18-15-105.
 5. The applicant shall demonstrate managerial and institutional capability pursuant to R18-15-106.
 6. The applicant shall demonstrate completion of the environmental review process pursuant to R18-15-107.
 - ~~67.~~ The applicant shall demonstrate readiness to proceed pursuant to ~~R18-15-107~~ R18-15-108.
 - ~~78.~~ The applicant shall obtain or be in the process of obtaining all ~~applicable~~ permits and approvals required by federal, state, and local authorities.
- C. The Board shall provide financial assistance to eligible applicants for proposed projects in priority order according to the priority list developed pursuant to R18-15-304. If the Board determines that an applicant will not be able to proceed with a project in a manner consistent with the Drinking Water Revolving Fund Intended Use Plan, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has been bypassed. The Board shall replace the bypassed project with the next project on the Drinking Water Revolving Fund Priority List in rank order that is ready to accept financial assistance.

R18-15-303. Drinking Water Revolving Fund Intended Use Plan

The Board shall publish an Intended Use Plan for each year in which it anticipates that it will provide financial assistance for eligible projects. At a minimum, the Intended Use Plan shall identify the projects by eligible applicant, project name, type of project, type of financial assistance, amount of financial assistance, ~~population served by the project, and estimated interest rates to be charged.~~ As applicable, the Intended Use Plan shall be prepared after providing for public comment and review. When an Intended Use Plan is to be submitted as first 1 of the required documents required to obtain a grant under the Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25), the Intended Use Plan shall include such any additional information as required by federal law.

R18-15-304. Drinking Water Revolving Fund Priority List

- A. Each year the Board shall adopt the Priority List for the next year: 12-month period. The Board shall not adopt a new list for years when funds are not adequate to assist any projects.
- B. When the Priority List is required pursuant to subsection (A), the Board shall rank the projects by priority class (alphabetized with A as the highest priority class), priority points, and year.
- C. An applicant desiring placement on the Priority List shall make its request for placement of 1 or more proposed projects on or before a date specified by the Board. When requesting placement on the Priority List, an applicant shall submit information within an application format specified by the Board.
- D. The Board shall prepare a draft Priority List. In developing a draft Priority List, the Board shall consider all requests submitted under subsection (C), all requests made by regulatory authorities, all plans prepared pursuant to the Safe Drinking Water Act 42 U.S.C. 300(f) through 300(j)(25), and the most recently adopted Priority List.
- E. The Board shall hold a public meeting to receive comments on the draft Priority List. The Board shall publish a notice of the public meeting in newspapers statewide at least 21 days prior to the meeting date and make copies of the draft Priority List available to the public at least 14 days prior to the meeting date.
- F. The Board shall consider all comments submitted in writing prior to the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but prior to the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. ~~The Board shall also consider the criteria identified in subsection (C).~~ The Board shall summarize all of the comments received, prepare responses, and adopt the Priority List to be used to administer the Drinking Water Revolving Fund during the following fiscal year.
- G. The Board ~~may~~ shall make additions or modifications to the Priority List when ~~all~~ all of the following conditions ~~is~~ are met:
1. The project meets the criteria for Priority Class A specified in R18-15-305(B) and funds ~~2. Funds are available to~~

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cover the cost of the project and to honor funding commitments made to other projects ~~or needed to support financial arrangements made to sell bonds for the state match.~~

32. The additions or modifications are made by the Board at a public meeting.
- H. After an opportunity for public comment at a public meeting, the Board may remove a project from the Priority List under any 1 of the following circumstances:
1. The project has received all financial assistance from the fund requested by the applicant.
 2. The project has been financed with long-term indebtedness from another source.
 3. The project is no longer an eligible project.
 4. The applicant requests removal.
- I. The Board shall retain a project on the Priority List, and work with each system in its assigned priority ranking if it is bypassed pursuant to ~~R18-15-302(D)~~ R18-15-302(C).

R18-15-305. Drinking Water Revolving Fund Priority Classes

- A. The Board shall evaluate each project on the Priority List and place it into a priority class. The Board may place major portions of a project into different priority classes. The Board shall consider separation of a project into different priority classes when requested by the applicant or when the Board determines that available funds are inadequate to provide assistance to projects critical to the public health or to water quality. The Board may reevaluate project priority classes under R18-15-304(G) if supported by information such as facility plans, feasibility studies, enforcement actions, and environmental reviews conducted under ~~R18-15-307~~ R18-15-107. If the Board determines that the problem being addressed by a project can be corrected by proper operation and maintenance of existing facilities, the project is ineligible for financial assistance.
- B. Class A -- The Board may designate a project as Priority Class A if ~~acute continuous or intermittent~~ violations of the national primary drinking water standards exist involving acutely toxic contaminants. ~~Acute violation are either continuous or intermittent violations where a single exposure to a drinking water contaminant can cause severe health effects.~~ The violations shall be documented by official reports, data, or findings of a regulatory authority, ~~and corrective~~ Corrective action or mitigation measures ~~have been~~ shall be initiated as and evidenced by 1 or more of the following:
1. An administrative order issued by a regulatory authority.
 2. A court order or decision.
 3. A voluntary compliance agreement with a regulatory authority
 4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
 5. A voluntary corrective action plan with a regulatory agency implemented by the applicant and evidenced by restrictions or moratoriums.
- C. Class A: Continuing Construction Projects -- In addition to R18-15-305(B), the Board may designate a project as Priority Class A if the project received funding in a prior fiscal year, the Board entered into a multi fiscal year funding commitment with the applicant, and the project received at least 20 points under R18-15-306(~~E~~).
- D. Class B -- The Board may designate a project as Priority Class B if ~~the goal of the project is to eliminate a non-acute a~~ violation of the national primary drinking water standards involves non-acutely toxic contaminants documented by official reports, data, or findings of a regulatory authority and corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:
1. An administrative order issued by a regulatory authority.
 2. A court order or decision.
 3. A voluntary compliance agreement with a regulatory authority.
 4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
 5. A voluntary corrective action plan with a regulatory authority implemented by the applicant and evidenced by restrictions or moratoriums.
- E. Class C -- The Board may designate a project as Priority Class C if the goal of the project is ~~to do 1 of the following:~~
- ~~1-~~ Upgrade or rehabilitate existing delivery capability or existing facility design in accordance with the Safe Drinking Water Act Amendments.
 - ~~2- Construct a new drinking water facility.~~

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- F. Class D -- The Board may designate a project as Priority Class D if the goal of the project is to consolidate or regionalize service of previously separate drinking water facilities.
- G. Class E -- The Board may designate a project which does not receive a designation pursuant to subsections (B) through (F) as Priority Class E. ~~if the project is for future growth only or if the project has been financed from another source of long-term indebtedness.~~

R18-15-306. Drinking Water Revolving Fund Priority List Ranking Criteria

- A. The Board shall rank projects within priority classes using priority values obtained from the following formula:

$$PV = \frac{HC + CFS + LFC + PYF + CR}{HC + CFS + LFC + PYF + CR} \text{ where:}$$

PV = Priority Value

HC = Health Criteria

CFS = Condition of Facilities and Sources

LFC = Local Fiscal Capacity

PYF = Prior Year Funding

CR = Consolidation and Regionalization

- B. Health Criteria (HC) -- Whenever the Board determines that a project seeks to correct a violation of the national primary drinking water standards, the Board shall award HC points. The Board shall use ~~documentation requirements specified under Priority Classes A and B as contained in information from documents obtained under R18-15-305(B) and R18-15-305(D)~~ to assign HC points. The Board shall award HC points shall be awarded up to a maximum of 100 points with only 1 set of points awarded as follows:
 - 1. 100 points for continuous ~~acute~~ violations of the national primary drinking water standards involving acutely toxic contaminants.
 - 2. 80 points for intermittent ~~acute~~ violations of the national primary drinking water standards involving acutely toxic contaminants.
 - 3. 60 points for continuous ~~non-acute~~ violations of the national primary drinking water standards involving non-acutely toxic contaminants.
 - 4. 40 points for intermittent ~~non-acute~~ violations of the national primary drinking water standards involving non-acutely toxic contaminants.
- C. Condition of ~~Facilities Facility and Sources Source~~ (CFS) -- If an applicant is seeking financial assistance to construct, upgrade, or rehabilitate a drinking water ~~facilities facility~~, the Board shall award CFS points up to a maximum of 125 points as follows:
 - 1. 20 points to secure at least 51% of new eligible source capacity with a renewable sources source or 10 points to secure at least 51% of new eligible source capacity with a nonrenewable source.
 - 2. 20 points to construct, upgrade, or rehabilitate a component of the water treatment facilities facility, other than disinfection equipment.
 - 3. 20 points to upgrade or rehabilitate capacity of an existing eligible storage, pumping, or distribution ~~facilities facility~~.
 - 4. 20 points to upgrade or rehabilitate existing, required disinfection equipment.
 - 5. 15 points to protect an existing water sources source from an existing or future contamination threats threat, the project having been funded under 42 U.S.C. § 300j.
 - 6. 15 points to upgrade or rehabilitate an existing ~~wells well~~ or spring box.
 - 7. 10 points to repair an existing transmission or distribution-systems system.
 - 8. 5 points to reduce a taste, odor or corrosion problems problem with at an existing facilities facility.
- D. Local Fiscal Capacity (LFC) -- The Board shall award LFC points up to a maximum of 100 points as follows:
 - 1. Median Household Income (MHI) -- The Board shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:
 - a. 40 points if the area's MHI is less than 25% of the State's MHI.
 - b. 30 points if the area's MHI is between 25% and 50% of the State's MHI.
 - c. 20 points if the area's MHI is between 51% and 75% of the State's MHI.

- d. 10 points if the area's MHI is between 76% and 100% of the State's MHI.
- e. 0 points if the area's MHI is more than 100% of the State's MHI.
2. User Fees -- The Board shall divide the applicant's proposed user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:
 - a. 20 points if the rates are more than 2% of the area's MHI.
 - b. 10 points if the rates are between 1% and 2% of the area's MHI.
 - c. 0 points if the rates are less than 1% of the area's MHI.
3. Investment -- The Board shall divide existing indebtedness, existing investments, and proposed indebtedness by service area's MHI (Investment/Service Area MHI) to award points based as follows:
 - a. 20 points if the existing and proposed investment is more than 1% of the area's MHI.
 - b. 10 points if the existing and proposed investment is between .5% and 1% of the area's MHI.
 - c. 0 points if the existing and proposed investment is less than .5% of the area's MHI.
4. Cost Effectiveness (CE) -- The Board shall divide the estimated costs of construction by the number of benefitting connections (Construction Costs/# of Benefitting Connections) to award points as follows:
 - a. 20 points if CE is less than \$2,500 per benefitting connection.
 - b. 10 points if CE is between \$2,500 and \$5,000 per benefitting connection.
 - c. 0 points if CE is more than \$5,000 per benefitting connection.
- E. Prior Year Funding (PYF) -- The Board shall award PYF points up to a maximum of 30 points with only 1 set of points awarded as follows:
 1. 30 points if the applicant requests additional financial assistance for a multi-year construction project which received financial assistance from the Authority in a previous fiscal year.
 2. 20 points if the applicant requests additional financial assistance to offset actual costs or justified overruns.
 3. 10 points if the applicant requests financial assistance to construct a project which received planning and design financial assistance from the Authority in a previous fiscal year.
 4. -10 points if the applicant requests financial assistance to offset cost overruns.
- F. Consolidation & Regionalization (CR) -- The Board shall award CR points up to a maximum of 50 points as follows:
 1. 20 points if the applicant is consolidating the physical facilities of existing multiple facilities.
 2. 20 points if the applicant is extending service to existing areas currently served by another facility.
 3. 5 points if the applicant is consolidating the operations of existing multiple facilities.
 4. 5 points if the applicant is consolidating the ownership of existing multiple facilities.
- G. The Board may use the most recent United States census data to determine the applicant's and the state's median household income. If the Board or the applicant determines that this data is insufficient, an income survey can be conducted the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. by a reliable impartial source. If the applicant's service area is included in more than 1 income area, the Board may use an average of income areas to define the service area's median household income.

~~R18-15-307. Environmental Review~~

Moved to Article 1.

~~R18-15-308 R18-15-307. Project Construction~~

- A. The Department shall not issue an Approval to Construct to an applicant or recipient until the Department has conducted an on-site inspection.
- B. Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:
 1. All easements and rights-of-way have been obtained.
 2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. § 41-2501 *et seq.*
 3. All required approvals and permits have been obtained from the following entities:

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- a. The Department including the requirements contained in 18 A.A.C. 4.
- b. Applicable federal, state, and local authorities as related to:
 - (1) Leases.
 - (2) Zoning permits.
 - (3) Building permits.
 - (4) Flood plain approvals.
 - (5) Air quality permits.
 - (6) Solid waste approvals.
- C. During construction of drinking water facilities, the recipient shall do all of the following:
 - 1. Conduct work in compliance with the requirements of 18 A.A.C. 4.
 - 2. Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.
- D. Upon project completion, all of the following requirements shall be satisfied:
 - 1. The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 4.
 - 2. The recipient shall accept the project in writing.
 - 3. Any required operation and maintenance manual shall be completed.
 - 4. As-built plans and specifications shall be submitted to the Department Authority and the recipient.
- E. Within 1 year after project completion, the recipient shall certify that the drinking water facility project meets design specifications. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the drinking water facility project does not meet design standards and what will be done to correct the deficiency, together with a schedule for the corrective actions.

R18-15-309 R18-15-308. Drinking Water Revolving Fund Requirements

- A. The Board shall identify Drinking Water Revolving Fund requirements applicable to each project pursuant to the Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25).
- B. If applicable, the applicant shall design a user charge system to produce adequate revenues for operation and maintenance, including replacement. An applicant's user charge system, based on actual or estimated use of the drinking water facilities, shall provide that each user or user class pays its proportionate share of operation and maintenance, including replacement costs of facilities within the applicant's service area, based on the user's proportionate use of the facilities.
- C. The applicant shall certify that it has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kick-backs, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning or design work on a drinking water facility project.

ARTICLE 4: WATER INFRASTRUCTURE FINANCE

AUTHORITY OF ARIZONA: OTHER FINANCIAL ASSISTANCE

R18-15-401. Types of Financial Assistance Available

- A. The Authority may ~~use~~ issue Water Quality Bonds on behalf of eligible applicants for any of the following types of financial assistance:
 - 1. Loans.
 - 2. The purchase or refinance of local debt obligations. ~~of political subdivisions.~~
- B. The Authority may guarantee or purchase ~~of~~ insurance for local obligations ~~for eligible applicants~~ to improve credit market access or reduce interest rates for eligible applicants.

R18-15-402. Eligibility Requirements for Financial Assistance

- A. ~~An To be eligible to receive financial assistance, an applicant may shall propose a project for any of the following purposes: the planning, design, construction, or refinancing of to: plan, design, construct, improve, acquire, or refinance a wastewater facilities facility, a drinking water facilities facility, and or a nonpoint source projects project.~~
- B. A project eligible under subsection (A) shall also meet all of the following ~~applicable~~ requirements prior to receiving financial assistance:
 - 1. The applicant shall demonstrate legal capability pursuant to R18-15-103.

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2. The applicant shall demonstrate financial capability pursuant to R18-15-104.
3. The applicant shall demonstrate technical capability pursuant to R18-15-105.
4. The applicant shall demonstrate managerial and institutional capability pursuant to R18-15-106.
- ~~5. The applicant shall demonstrate completion of the environmental review process pursuant to R18-15-107.~~
- ~~56. The applicant shall demonstrate readiness to proceed pursuant to ~~R18-15-107~~ R18-15-108.~~
67. The applicant shall obtain or be in the process of obtaining all applicable permits and approvals required by federal, state, and local authorities.

~~R18-15-403. Environmental Review~~

Moved to Article 1.

~~R18-15-404 R18-15-403. Project Construction~~

A. Construction of a project shall conform to all of the following requirements found in this Section.

~~A.B.~~ The Department shall not issue an Approval to Construct to an applicant or recipient until the Department has conducted an on-site inspection.

~~B.C.~~ Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:

1. All easements and rights-of-way have been obtained.
2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ 41-2501 et seq.
3. All required approvals and permits have been obtained from the following entities:
 - a. The Department including the requirements contained in 18 A.A.C. 4 ~~and or~~ 18 A.A.C. 9, as applicable.
 - b. Applicable federal, state, and local authorities as related to:
 - (1) Leases.
 - (2) Zoning permits.
 - (3) Building permits.
 - (4) Flood plain approvals.
 - (5) Air quality permits.
 - (6) Solid waste approvals.

~~C.D.~~ During construction of the project, the recipient shall do all the following:

1. Conduct work in compliance with the requirements of 18 A.A.C. 4 ~~and or~~ 18 A.A.C. 9, as applicable.
2. Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.

~~B.E.~~ Upon project completion, all of the following requirements shall be satisfied:

1. The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 4 ~~and or~~ 18 A.A.C. 9, as applicable.
2. The recipient shall accept the project in writing.
3. Any required operation and maintenance manual shall be completed.
4. As-built plans and specifications shall be submitted to the ~~Department~~ Authority and the recipient.

~~E.F.~~ Within 1 year after project completion, the recipient shall certify that the project meets design specifications. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the project does not meet design standards and what will be done to correct the deficiency, together with a schedule for the corrective actions.

10. A summary of the principal comments and the agency response to them:

ISSUE: WIFA was informally requested by applicants to expressly state how confidential information would be kept confidential.

ANALYSIS: In response to this request, WIFA added a subsection to R18-15-102, the Application Process. This addition clarifies how to identify confidential information, and WIFA's responsibility in handling this information.

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CONCLUSION: R18-15-102 was amended by adding the section shown below:

~~E. Any confidential information shall be marked with the words "confidential information" on each page of the material containing such information. A claim of confidential information may be asserted for confidential trade secret or confidential information. The Authority shall not disclose any confidential information. Any information reviewed by the Department shall be done in compliance with A.R.S. § 49-358 unless there is an imminent and substantial endangerment to public health or the environment.~~

The following comments were solicited from GRRC staff during the courtesy review. These did not result in a change to the rule.

ISSUE: District creation information [for special taxing districts] will trickle in over time. Why not have the borrower provide it to the Authority all at once?

ANALYSIS: A.R.S. Title 48 enumerates, in great detail, the creation of special taxing districts (sanitary districts, domestic water improvement districts, fire districts, etc.). To ensure that the districts are properly formed and to prevent significant delays, we prefer to review each step of the process. This does not lead to duplication of WIFA's or the borrower efforts.

CONCLUSION: No change to the rule.

ISSUE: One commenter asked if there will be "policies" or will the interest rates simply be set on a case by case basis by the Board.

ANALYSIS: The Board will set the rates on a loan by loan basis using the local fiscal capacity and a Board policy.

CONCLUSION: No change to the rule.

ISSUE: One commenter asked why the 2nd sentence of R18-15-202(B)(7) was removed. (Until all applicable permits and approvals required by federal, state, and local authorities are obtained, the Board shall limit payments of financial assistance to preconstruction activity ...)

ANALYSIS: This requirement has been summarized within R18-15-107, Readiness to Proceed.

CONCLUSION: No change to the rule.

ISSUE: One commenter asked why the application requirements appeared to be reduced from the repealed rule in 18 A.A.C. 10.

ANALYSIS: Statutes governing each potential borrower's "borrowing" authority is unique. In addition, sources of repayment vary from borrower to borrower. It is easier for WIFA staff to generate application formats for individual borrowers (with most of the information previously collected by WIFA staff) than to require the borrower supply all the median household income and other demographic type information. This makes the playing field equal such that small facilities are not burdened by collecting the information, because most required information is available at the state level from DES, DOR, DEQ, DOC, ASU, etc., therefore it is readily available to WIFA staff.

CONCLUSION: No change to the rule.

ISSUE: One commenter asked why the public notice and comment periods were reduced in R18-15-204(F).

ANALYSIS: The time periods previously found in 18 A.A.C. 10 were 45 and 30 days. These were too long and led to a lower public participation rather than higher participation. WIFA staff inquired about the minimal attendance in the past, and the public indicated that they tended to forget if the time was more than 2 to 3 weeks. Additionally, the notice is for the meeting which does not require substantial preparation on the public's part.

CONCLUSION: No change to the rule.

ISSUE: One commenter asked about the difference between R18-15-206(C)(2) and R18-15-206(C)(7).

ANALYSIS: An unsewered area, subsection (C)(2), is an existing residential/commercial area which is not currently served by a wastewater facility. This means the area only has septic tanks. Expanding capacity for future growth as found in subsection (C)(7), is specific to future needs that are not currently in existence. R18-15-206(C)(2) is directed to build for current needs that is an unsewered area that is already inhabited. WIFA believes a need for a new system to assist an inhabited area is more urgent than a need for an area to later be inhabited. A currently inhabited area will be ready to proceed far before an uninhabited area because the rate base is established.

CONCLUSION: No change to the rule.

ISSUE: One commenter indicated that the use of terms such as EA, EID, and EIS were confusing.

ANALYSIS: The terms used in determining the extent of the preparation of the environmental assessment is totally dictated by federal regulations. The terms, which are indicated are somewhat self explanatory, although numerous. For example, before a full blow environmental impact statement must be prepared, an assessment of the environment must be made to determine if a categorical exclusion might apply. If a categorical exclusion does not apply, the document prepared is an Environmental Information Document to determine the extent of the environmental assessment.

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WIFA staff assists borrowers through each step of this process and more likely will complete the documents/forms with the information generally available. WIFA has found that most projects are "categorical exemptions" and it is infrequent that the EID or EIS is required.

CONCLUSION: No change to the rule.

ISSUE: One commenter asked about why the "user charge system" was removed from R18-15-208.

ANALYSIS: Many of the federal requirements for the Clean Water Revolving Fund sunset on October 1, 1994, because the Clean Water Act was not reauthorized by Congress. The lack of reauthorization has removed the requirement for a complete user charge system review. However, WIFA believes the review is accomplished within the context of the financial capability review. Therefore, the net effect is really "no change."

CONCLUSION: No change to the rule.

Region IX of the USEPA provided written comments on the rule. The comments are summarized from an attached table that includes the comment, WIFA's response and EPA's verification that WIFA's response was satisfactory. Each comment is summarized with the change noted. The changed text is shown in the section that contains the changes from the proposed rule to the final rule.

ISSUE: Definition needs to include "preconstruction".

ANALYSIS: To ensure consistency in interpretation of the rule, the definition of preconstruction must be included.

CONCLUSION: R18-15-101 is amended to include this definition

ISSUE: Department is out of order.

ANALYSIS: Definitions are to be listed alphabetically for consistency in rule drafting style.

CONCLUSION: R18-15-101 amended to move Department into correct alphabetical order.

ISSUE: The rule does not expressly state the requirement that the drinking water system must either be in compliance or demonstrate the ability to achieve compliance including adequate technical, managerial, and financial capacity for financing.

ANALYSIS: WIFA will further clarify this relationship in a policy statement, because the rule reflects this based upon the point system.

CONCLUSION: No change to the rule.

ISSUE: Drinking Water Facility is incorrectly used to mean "project" in some instances.

ANALYSIS: To ensure consistent interpretation of the use of facility versus project, the 2 different terms must be clarified. A facility is the complete provider of either drinking water or wastewater treatment, whereas project refers to the portion of a facility which is funded by WIFA. A project could just be water lines, or a booster system, whereas a facility includes many more components than a project. It is possible that a project could be the entire facility, but this cannot be presumed in the rule.

CONCLUSION: R18-15-302(A), R18-15-306(E)(2), R18-15-308(E), and R18-15-309(C) were amended to remove "drinking water facility" and replace the term with "project."

ISSUE: Is the attorney's opinion about legal capacity truly optional?

ANALYSIS: To ensure consistent interpretation of the rule, any language that could be interpreted in more than one way must be more precisely written.

CONCLUSION: R18-15-103 has been amended to show the attorney's opinion is required in all cases.

ISSUE: Shouldn't financial capability include the "cost of operation, maintenance and replacement?"

ANALYSIS: Financial capability could mean more than one thing to the reader, therefore it is clarified.

CONCLUSION: R18-15-104(B) has been amended to include the suggested language.

ISSUE: R18-15-301(A) indicates that political subdivisions are eligible for financing. This is too broad.

ANALYSIS: R18-15-301(A) refers only to drinking water facilities that are a form of a political subdivision thereby excluding any private companies.

CONCLUSION: No change to the rule.

ISSUE: How will WIFA address the 15 possible set-asides?

ANALYSIS: The ability to award set-asides is an agreement between WIFA and the ADEQ based upon need and funding. Therefore WIFA will address this in policy and publish this in the Intended Use Plan.

CONCLUSION: No change to the rule.

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ISSUE: The 15% set-aside for small systems described in R18-15-301 appears less stringent with "may be awarded" language, than is required by the Safe Drinking Water Act.

ANALYSIS: The Safe Drinking Water Act requires this set-aside be made to assist small drinking water systems (serving fewer than 10,000 people). It is very important that this requirement be expressly stated to ensure the small systems know that their interests are being served by this program.

CONCLUSION: R18-15-301 was amended to remove "may be awarded" and replace it with "shall be available solely for".

ISSUE: In R18-15-302(B)(2) a reference to 203 should be 103.

ANALYSIS: All cross references needed to be checked for accuracy.

CONCLUSION: R18-15-15-302 has been amended.

ISSUE: Remove "as applicable", "as 1st of the required documents" from R18-15-303.

ANALYSIS: The rule

CONCLUSION: R18-15-303 has been amended.

ISSUE: Why is "At a minimum" used to summarize the Intended Use Plan requirement?

ANALYSIS: WIFA believes this accurately states all known standards for this plan. WIFA has the responsibility to provide the information, therefore, when EPA changes requirements for the Intended Use Plan, the WIFA can effectively respond to new guidance documents. This does not impose any new requirement upon the drinking water facilities. It merely reflects the fact that WIFA uses the rule, policy, and an agreement when working with the USEPA.

CONCLUSION: No change to the rule.

ISSUE: R18-15-304(F) references subsection C, which does not contain criteria.

ANALYSIS: All cross references should be checked for accuracy.

CONCLUSION: R18-15-304(F) has been corrected to Subsection G.

ISSUE: R18-15-304(G) appears to contain by-pass procedures. If this is true, then the rule should say, these are bypass procedures.

ANALYSIS: WIFA provided these procedures to explain what is done to amend the Priority List after public comment, they are not intended to be any kind of a bypass procedure.

CONCLUSION: No change to the rule.

ISSUE: Did WIFA consider a separate class for a system that is consolidated which has good technical, managerial, and financial capability when combined with another that does not have good technical, managerial, and financial capability? It appears the same value is assigned whether the technical, managerial, and financial capability is good or bad.

ANALYSIS: If this change is placed in rule, it could be interpreted as a substantial change, therefore WIFA will have to amend the rule in the future to include this change. However, the test classification that was done when writing the rule did reward good technical, managerial, and financial capability through the Board's evaluation and the "readiness to proceed."

CONCLUSION: No change to the rule.

ISSUE: Delete "future" growth in R18-15-201 as a fundable activity.

ANALYSIS: WIFA will explain in its cover letter to the EPA that it is not a fundable category on its own. This can be funded relative to the readiness of drinking water facilities, and the available money. Therefore, the rule reflects WIFA's ability to fund with water quality bonds which is a greater funding source than just the federally financed bonds.

CONCLUSION: No change to the rule.

ISSUE: Correct the formula in R18-15-306(A).

ANALYSIS: For readability, a formula should match the list of the variables.

CONCLUSION: R18-15-306(A) is amended to reflect this correction.

ISSUE: Does secure source capacity include project for acquiring water rights?

ANALYSIS: No this is not allowed at this time. This will be further explained in WIFA's cover letter to the EPA.

CONCLUSION: No change to the rule.

ISSUE: Will a system that is low because of local fiscal capacity be considered a disadvantaged community?

ANALYSIS: WIFA has not set the standards for a disadvantaged community. WIFA needs further public input to make this determination and will do this in a subsequent rulemaking.

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CONCLUSION: No change to the rule.

ISSUE: Why are the Environmental Assessment requirements different for drinking water projects than clean water projects?

ANALYSIS: This was an oversight and corrected in the final rule. Sections 207, 307, and 403 were removed and all the information about the environmental review was placed in R18-15-107.

CONCLUSION: R18-15-107 was created and the EIS was removed from all other Articles.

The following comments were received from the USEPA (Washington D.C. office), which did not result in a change to the rule.

ISSUE: Please provide a copy of A.R.S. § 49-371 for the definition of "drinking water facility."

ANALYSIS: Not applicable.

CONCLUSION: No change to the rule.

ISSUE: WIFA needs to clarify that refinancing of a drinking water facility is only applicable to a project that must have initiated construction after July 1, 1993.

ANALYSIS: The dates are expressly stated in R18-15-301(A)(1)(b).

CONCLUSION: No change to the rule.

ISSUE: Is there only priority list?

ANALYSIS: Yes. Although there are different funding sources, that is set-asides versus loan financing, WIFA believes that the most efficient way to ensure timely distribution of funds, which is a federal requirement, is to maintain priority list. WIFA will review this in its 2nd year of operation.

CONCLUSION: No change to the rule.

ISSUE: It appears that the requirements for readiness to proceed are more stringent than the Safe Drinking Water Act requires. Can WIFA allow flexibility for a system to be funded if ready to proceed within 6 to 8 months?

ANALYSIS: WIFA understands that it may take at least 6 to 8 months for an applicant who is eligible for funds to actually be ready to receive funds. Readiness to proceed is not a ranking criteria, it is merely used to ensure timely distribution of funds within each year. WIFA does not intend to allow funds that can be obligated within a funding year to lapse into a subsequent year.

CONCLUSION: No change to the rule.

ISSUE: If the Board bypasses a project, does this mean that a high ranking project which is a few months from being ready to proceed will require the project re-compete for the subsequent years funding?

ANALYSIS: Readiness to proceed is only used to trigger disbursement of funds. A project that is that close to ready to proceed will have an agreement and the funds will be obligated. Therefore, it is not anticipated that the ability to receive funds will negatively impact a project's ranking.

CONCLUSION: No change to the rule.

ISSUE: Add language that states that the Board will work with bypassed systems to ensure they may be ready to apply for funds in the following year.

ANALYSIS: These rules establish the types of financial assistance and the process for receiving funds. This is not the forum to explain public policy whereby the Board assists a bypassed system, because the type of assistance cannot be described in rule. Therefore, the Board will explain in policy how it will work with bypassed systems.

CONCLUSION: No change to the rule.

ISSUE: WIFA places a high priority on continuing construction projects. A project connected to a previously funded project can get points elsewhere. This appears contrary to the awarding of funds in priority order based upon compliance, public health and afford ability.

ANALYSIS: Multi-year projects are inevitable because of the numerous drinking water facilities, and because portions of their projects will be urgent, whereas the entire project is not completely urgent. Therefore, the implementation of multi-year funding is not done in isolation. The prioritization of solutions to people's drinking water problems directs the funding.

CONCLUSION: No change to the rule.

ISSUE: Explain the new source capacity and renewable sources.

ANALYSIS: The Safe Drinking Water Act does not disallow it. The reflects possible options without all specifics. Therefore, the rule is looking for the most cost effective solution to a drinking water problem.

CONCLUSION: No change to the rule.

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ISSUE: Total points under local fiscal capacity is equivalent to the amount of points for health criteria. Fiscal capacity points should be reduced.

ANALYSIS: Local Fiscal Capacity (LFC) is a ranking within a class. Therefore, the number of points assigned will not change the class a drinking water facility is in. The LFC is used primarily to determine a rate for repayment of the loan. WIFA believes afford ability and compliance go "hand-in-hand" therefore, the interest rate of the loan and the loan capacity of the facility are evaluated within any class.

CONCLUSION: No change to the rule.

ISSUE: Cost effectiveness should be encouraged, but not the way this rule appears to have described it. It appears that cost effectiveness will only benefit large systems. Emphasis in the priority system should be directed toward smaller systems.

ANALYSIS: This portion of the ranking is merely intended to be a tie-breaker. When points were assigned to drinking water systems in Arizona to apply the rule to "real" systems, WIFA found that when 2 systems are equal in all ways, this served only as an influencer to encourage a cost effective solution. WIFA realizes that smaller systems will tend to cost more per user, however, WIFA believes the other factors will elevate small systems in compliance with the Safe Drinking Water Act.

CONCLUSION: No change to the rule.

ISSUE: Class E projects do not appear to meet eligibility requirements for funding. Please provide additional information to clarify.

ANALYSIS: Class E is to encourage multi-year funding because WIFA has so few dollars to disburse to so many systems. WIFA is confident that there will be problems at the end of the 1st year due to the numbers of unfunded projects, therefore, WIFA believes if it can help fund some of the project, that the facility can begin to come into compliance rather than "wait on the sideline."

CONCLUSION: No change to the rule.

The following comments were received from other sources (not the EPA).

ISSUE: Articles 2 and 3 appear to give credit for critical contaminant violations, but not for proactive efforts that should be acknowledged with additional ranking points.

ANALYSIS: The rule does not expressly assign points for someone trying to come into compliance due to the subjective nature of this evaluation. However, WIFA believes that even though the project priority lists reflects the problems, that the proactive efforts are rewarded in Section 108 which is "Readiness to Proceed." A facility that is proactive will be ready to proceed far in advance of that has just identified the problem. Additionally, a facility is reviewed for technical capability in R18-15-105(C), which addresses compliance. Therefore, WIFA believes the rule inherently rewards proactive efforts.

CONCLUSION: No change to the rule.

ISSUE: The cost effectiveness factor could adversely affect rural systems with the greatest need.

ANALYSIS: WIFA believes that the cost effectiveness factor is a small factor intended to merely send a message that ultra-expensive technology will not be rewarded. WIFA believes that due to the small percentage of points assigned the cost effectiveness factor that it will only tip the scale when all other factors are equal.

CONCLUSION: No change to the rule.

ISSUE: System size needs to be equated to only the number of persons served within political boundaries.

ANALYSIS: This has been accomplished because the authority for voter authorization rests within only the persons served by the political boundary. This information is located in the statutes that create the political subdivisions such as a county improvement district, a sanitary district, or a drinking water facility that is a political subdivision.

CONCLUSION: No change to the rule.

ISSUE: User Fees do not clarify how water rates related to median household income.

ANALYSIS: Median household income is a measure of local wealth and serves to show local fiscal capacity. WIFA will provide subsidy based on local fiscal capacity and the impact of user fees. This is tied into the facility's ability to repay the loan. Therefore, the water rate indicates the drinking water facility's ability to repay the loan.

CONCLUSION: No change to the rule.

ISSUE: Why do you have 2 types of Class A priorities?

ANALYSIS: When WIFA finances a multi-year project with continuing construction, to ensure the project is finished, the subsequent year components must be high enough on the project priority list to ensure funding. Therefore, continuing construction must be a priority A.

CONCLUSION: No change to the rule.

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ISSUE: One commenter suggested that Articles 2 and 3 should give credit for proactive actions.

ANALYSIS: WIFA believes that implementation of this rulemaking will result in credit for proactive actions. The rating criteria for classification is based upon impact to human health and the environment. However, the awarding of points takes into consideration past actions regarding the problem and capacity development which favors systems with managerial, technical, and financial capacity.

CONCLUSION: No change to the rule.

ISSUE: One commenter expressed concern over the cost effectiveness factor, because it may adversely effect rural systems.

ANALYSIS: WIFA believes that on the surface this may appear to be true. However, cost effectiveness has a low point value, because it is only intended to be a tie breaker if all other factors are equal. WIFA believes that these points will reward systems that chose appropriate technology over systems that chose extravagant solutions.

CONCLUSION: No change to the rule.

ISSUE: One commenter stated that system size in R18-15-301 should only be equated to the number of persons served within the political boundaries that will be asked to vote on the repayment authorization.

ANALYSIS: WIFA believes this concern has been addressed by changing drinking water facility to "project" in the rule. WIFA agrees that funding a project should be related to the number of persons served within the political boundaries.

CONCLUSION: No additional change to the rule.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules.
Not applicable.
12. Incorporation by reference and their location in the rules.
Not applicable.
13. Was the rule previously adopted as an emergency rule?
No.
14. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

ARTICLE 1. MANAGEMENT

Section

- R18-15-101. Definitions
- R18-15-102. Application Process
- R18-15-103. Legal Capability
- R18-15-104. Financial Capability
- R18-15-105. Technical Capability
- R18-15-106. Managerial and Institutional Capability
- R18-15-107. Environmental Review Process
- R18-15-108. Readiness to Proceed
- R18-15-109. Interest Rate Determinations
- R18-15-110. Disbursements and Repayments
- R18-15-111. Administration
- R18-15-112. Disputes

ARTICLE 2. CLEAN WATER REVOLVING FUND

Section

- R18-15-201. Types of Financial Assistance Available
- R18-15-202. Eligibility Requirements for Financial Assistance
- R18-15-203. Clean Water Revolving Fund Intended Use Plan
- R18-15-204. Clean Water Revolving Fund Priority List
- R18-15-205. Clean Water Revolving Fund Priority Classes
- R18-15-206. Clean Water Revolving Fund Priority List Ranking Criteria
- R18-15-207. Project Construction
- R18-15-208. Clean Water Revolving Fund Requirements

ARTICLE 3. DRINKING WATER REVOLVING FUND

Section

- R18-15-301. Types of Financial Assistance Available
- R18-15-302. Eligibility Requirements for Financial Assistance
- R18-15-303. Drinking Water Revolving Fund Intended Use Plan
- R18-15-304. Drinking Water Revolving Fund Priority List
- R18-15-305. Drinking Water Revolving Fund Priority Classes
- R18-15-306. Drinking Water Revolving Fund Priority List Ranking Criteria
- R18-15-307. Project Construction
- R18-15-308. Drinking Water Revolving Fund Requirements

ARTICLE 4. OTHER FINANCIAL ASSISTANCE

Section

- R18-15-401. Types of Financial Assistance Available
- R18-15-402. Eligibility Requirements for Financial Assistance
- R18-15-403. Project Construction

ARTICLE 1. MANAGEMENT

R18-15-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, and 49-371, the terms of this Article, unless otherwise specified, have the following meanings:

1. "Acutely toxic" means the ability of a substance to cause poisonous effects resulting in severe biological harm or death after a single exposure or dose.
2. "Applicant" means a governmental unit or a drinking water facility that is seeking financial assistance from the authority pursuant to the provisions of this Chapter.
3. "Application" means a request for financial assistance submitted to the Board, by an applicant.

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4. "Approval to Construct" means the written approval issued by the Department to an applicant or recipient indicating that project construction may begin.
5. "Authority" means the Water Infrastructure Finance Authority of Arizona pursuant to A.R.S. § 49-371.
6. "Board" means the board of directors of the authority pursuant to A.R.S. § 49-371.
7. "Certified Water Quality Management Plan" means a plan prepared by the designated Water Quality Management Planning Agency, pursuant to § 208 of the Clean Water Act, 33 U.S.C. 1288 and certified by the Governor.
8. "Clean Water Revolving Fund" means the fund established by A.R.S. § 49-374.
9. "Collector" means a network of pipes or sewers used to collect and transport wastewater to a treatment plant or disposal system.
10. "Construction" means, for a project, any placement, assembly, or installation of a building, structure, equipment, treatment process, collection lines, distribution lines, pumps, or related drinking water or water pollution control activity.
11. "Dedicated Source of Repayment" means the source of revenue authorized by the voters, petitioners or the Arizona Corporation Commission to be used to repay the financial assistance.
12. "Department" means the Arizona Department of Environmental Quality.
13. "Design life" means the period during which a treatment works or drinking water facility is planned and designed to be operated.
14. "Designated Water Quality Management Planning Agency" means a single representative organization designated by the Governor pursuant to § 208 of the Clean Water Act, 33 U.S.C. 1288, to develop a Certified Water Quality Management Plan for the area.
15. "Disbursement" means the transfer of cash from the fund to a recipient.
16. "Drinking Water Facility" means a community water system as defined in R18-4-101, or a nonprofit non-community water system as defined in R18-4-101.
17. "Drinking Water Revolving Fund" means the fund established by A.R.S. § 49-374.01.
18. "EPA" means the United States Environmental Protection Agency and its successor.
19. "Equivalency Project" means a wastewater treatment facility under § 212 of the Clean Water Act, 33 U.S.C. 1292, constructed in whole or in part before October 1, 1994, with funds equaling the amount of the federal capitalization grant.
20. "Executive Director" means the executive director of the Water Infrastructure Finance Authority of Arizona.
21. "Federal capitalization grant" means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the Clean Water Revolving Fund and the Drinking Water Revolving Fund.
22. "Financial assistance" means the use of monies for any of the purposes identified in R18-15-201, R18-15-301, and R18-15-401.
23. "Financial assistance agreement" means any agreement, including a loan repayment agreement, that defines the terms for financial assistance given pursuant to this Article.
24. "First Use Project" means a project identified by EPA and the state as part of the National Municipal Policy List for the state.
25. "Governmental unit" means a political subdivision or Indian tribe that may receive financial assistance from the Authority pursuant to A.R.S. § 49-373.
26. "Infiltration" means water other than wastewater that enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes.
27. "Intended Use Plan" means the document prepared by the Authority identifying the intended uses of Clean Water Revolving Fund and Drinking Water Revolving Fund capitalization grants pursuant to R18-15-203 and R18-15-303.
28. "Interceptor" means a sewer which is designed for 1 or more of the following purposes:
 - a. To intercept wastewater from a final point in a collector and convey such wastes directly to a treatment facility or another interceptor.
 - b. To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector or interceptor for conveyance to a treatment plant.
 - c. To transport wastewater from 1 or more municipal collectors to another municipality or to a regional plant for treatment.
 - d. To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.
29. "Nonpoint Source Program" means Arizona's Nonpoint Source Program, approved by EPA under § 319 of the Clean Water Act, 33 U.S.C. 1329, for controlling pollution from nonpoint sources.
30. "Preconstruction" means any activity that occurs on the project before any physical activity on-site such as the erection, acquisition, alteration, remodeling, improvement, or extension of treatment works, collection lines, distribution lines, or pumps.
31. "Priority List" means the ranking of projects developed by the Board pursuant to R18-15-204 and R18-15-304.
32. "Project" means any distinguishable segment or segments of a wastewater treatment facility, drinking water facility or the Nonpoint Source Program which can be bid separately and for which financial assistance is being requested or provided.
33. "Project completion" means the date, as determined by the Authority, after consultation with the Department and the applicant or recipient, that operation of the project is initiated or is capable of being initiated, whichever occurs 1st.
34. "Recipient" means an applicant who has entered into a financial assistance agreement with the Authority.
35. "Replacement" means obtaining and installing equipment or accessories which are necessary during the design and operation of the drinking water and wastewater infrastructure to maintain the capacity and performance for which such infrastructure were designed and constructed.
36. "Regulatory authority" means the Department, EPA, the Department of Health Services, a county, city, or other local health department, a county environmental agency, or a sanitary district.

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37. "State match" means the monies that may be used to meet the requirements of § 602(b)(2) of the Clean Water Act, 33 U.S.C. 1382 and 1452(e) of the Safe Drinking Water Act, 42 U.S.C. 300(j)(12).
38. "Treatment works" means any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes used to implement § 201 of the Clean Water Act, 33 U.S.C. 1281, or necessary to recycle or reuse water over the design life of the works.
39. "User charge" means a charge levied on users of drinking water and wastewater infrastructure.

R18-15-102. Application Process

- A. An applicant for financial assistance shall apply to the Authority for each type of financial assistance on forms provided by the Authority. After the Board determines that an application is complete and correct, the Authority may enter into a financial assistance agreement with the applicant.
- B. An applicant seeking Clean Water Revolving Fund financial assistance shall apply for financial assistance pursuant to Articles 1 and 2 of this Chapter.
- C. An applicant seeking Drinking Water Revolving Fund financial assistance shall apply for financial assistance pursuant to Articles 1 and 3 of this Chapter.
- D. An applicant seeking other types of financial assistance available through the Water Infrastructure Finance Authority shall apply for financial assistance pursuant to Articles 1 and 4 of this Chapter.
- E. Any confidential information shall be marked with the words "confidential information" on each page of the material containing such information. A claim of confidential information may be asserted for a trade secret or information that, upon disclosure, would harm a person's competitive advantage. The Authority shall not disclose any confidential information.

R18-15-103. Legal Capability

- A. The applicant shall demonstrate that it is legally authorized to enter into long-term indebtedness and legally authorized to pledge the dedicated revenue source for repayment required by R18-15-104.
- B. If the applicant is a political subdivision and the long-term indebtedness is authorized through an election, the applicant shall provide all of the following:
 1. One copy of the sample election ballot and election pamphlet at least 45 days prior to the election.
 2. One copy of the governing body resolution calling for the election at least 45 days prior to the election.
 3. One copy of the election results following the election.
 4. An attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.
- C. If the applicant is a political subdivision and the long-term indebtedness is authorized through a special taxing district creation process, the applicant shall provide all of the following:
 1. One copy of all final documentation, notices, petitions, and related information at the conclusion of each step in the special taxing district creation process.
 2. An attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.
- D. If the applicant is regulated by the Arizona Corporation Commission, the applicant shall provide all of the following:

1. Evidence that the financial assistance from the Authority to the applicant has been authorized by the Arizona Corporation Commission.
 2. An attorney's opinion on the current legal status of the applicant and the applicant's ability to legally enter into the financial assistance agreement.
- E. All other applicants who are not included in subsections (B), (C), and (D), shall demonstrate that a majority of the beneficiaries consent to the terms and conditions of the financial assistance. The Board will assist each applicant to devise a process by which this consent is documented.
- F. Based on the Board's determination of the applicant's legal capability, the Board may recommend modifications to the proposed project or the Board may recommend modifications to the applicant's legal structure and organization.

R18-15-104. Financial Capability

- A. The applicant shall identify a dedicated revenue source for repayment of the financial assistance. When determining an applicant's financial capability, the Board shall consider all the following:
 1. The amount of money collected through the dedicated revenue source for each of the previous 5 fiscal years.
 2. An estimate of the amount of money that will be collected through the dedicated revenue source for the current fiscal year.
 3. A projection of the amount of money that will be collected through the dedicated revenue source for each of the next 5 fiscal years.
- B. The applicant shall provide an estimate of the project costs, including applicable planning, design, and construction costs, as well as estimated annual operation, maintenance, and replacement costs.
- C. The applicant shall provide an estimated schedule of required disbursements of the financial assistance.
- D. The applicant shall provide the following information:
 1. One copy of each financial statement, audit, or comprehensive financial statement from the previous 5 fiscal years.
 2. One copy of each budget, business plan, management plan or financial plan from the previous 3 fiscal years and the current fiscal year.
 3. One copy of the proposed budget, business plan, management plan or financial plan for the next fiscal year.
 4. A summary of current fees for drinking or wastewater services including, as applicable, any resolutions passed by the governing body of a political subdivision.
 5. The most recent version of the applicant's capital improvement plan or other plan explaining proposed infrastructure investments.
 6. Copies of documentation relating to outstanding indebtedness including official statements, financial assistance agreements, and amortization schedules.
 7. The number of connections to be served by the proposed project.
- E. Based on the Board's determination of the applicant's financial capability and the Board's review of the estimated costs of the project, the Board may recommend modifications to the proposed project or the Board may recommend modifications to the dedicated revenue source.

R18-15-105. Technical Capability

- A. The Board shall review each applicant's technical capability to construct, operate and maintain the proposed project.
- B. The applicant shall provide the following information:

1. One copy of each feasibility study, engineering report, design memorandum, set of plans and specifications and other technical documentation related to the proposed project.
 2. Copies of resumes, biographies or related information of the certified operators, system employees, or contractors employed by the applicant to operate and maintain the existing facilities and the proposed project.
 3. A description of the service territory including maps.
 4. A description of the existing physical facilities.
- C. The Board may consider the applicant's compliance history, as applicable, to the Clean Water Act, 33 U.S.C. 1251 through 1387, Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25), related Arizona statutes, and related rules, regulations, and policies.
- D. Based on the Board's determination of the applicant's technical capability and the Board's review of the proposed project, the Board may recommend modifications to the proposed project.

R18-15-106. Managerial and Institutional Capability

- A. The Board shall review each applicant's capability to manage the proposed project.
- B. The applicant shall provide the following information:
1. As applicable, copies of resumes, biographies, years of experience, term of office and related information of the owners, managers, chief elected officials, and governing body members of the applicant.
 2. A list of professional and outside services retained by the applicant and the proposed project.
- C. The Board may consider the following:
1. As applicable, compliance history of the applicant relative to the Clean Water Act, 33 U.S.C. 1251 through 1387, Safe Drinking Water Act, 42 U.S.C. 300(f) through 300(j)(25), related Arizona statutes, and related rules, regulations, and policies.
 2. The scope and size of the proposed project and the applicant's ability to manage the project once completed.
- D. Based on the Board's determination of the applicant's managerial capability and the Board's review of the proposed project, the Board may recommend modifications to the proposed project.

R18-15-107. Environmental Review

- A. The Authority shall conduct an environmental review pursuant to this Section for impacts of the design or construction of water infrastructure works in accordance with applicable federal and state law. As part of the application process, the Authority shall request information from the applicant to conduct an environmental review consistent with the Clean Water Act, 33 U.S.C. 1251 through 1387, and A.R.S. Title 49.
- B. If, based on the application and other information submitted by the applicant, the Authority determines that a categorical exemption from an environmental review is warranted, the project is exempt from the requirements of this Section. The Authority shall grant an exemption if existing information and documents demonstrate that the project qualifies under 1 or more of the following categories:
1. Any project which is directed towards rehabilitation of existing facilities, functional replacement of equipment, or the construction of new ancillary facilities adjacent or appurtenant to existing facilities which do not affect the degree of treatment or capacity of the existing facility.

2. Any project in sewerred communities which is for minor upgrading and minor expansion of existing treatment works.
 3. Any project in unsewerred communities where on-site technologies are proposed.
- C. The Authority shall deny an exemption if the project falls under any of the following categories:
1. The project will create a new, or relocate an existing, discharge to surface or ground waters.
 2. The project will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters.
 3. The project is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions.
 4. The project is known or expected to directly or indirectly affect cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones; or other resource areas.
 5. The project is known or expected to cause significant public controversy.
 6. The project is known or expected not to be cost effective.
- D. If the Authority determines that a categorical exemption is not warranted under subsection (B), the applicant shall prepare an Environmental Information Document (EID) in a format prescribed by the Authority. The EID shall be of sufficient scope to allow development of an Environmental Assessment (EA) under subsection (E).
- E. The EA may be conducted by the Authority or by the applicant under the supervision of the Authority and shall include consideration of all of the following factors:
1. For the delineated planning area, the existing environmental conditions relevant either to the analysis of alternatives or to determining the environmental impacts of the proposed project.
 2. The relevant future environmental conditions of the delineated planning area, including the alternative of no action.
 3. The purpose and need for the project in the planning area, including the existing public health or water quality problems and their severity and extent.
 4. A comparative analysis of feasible alternatives, including no action, throughout the project area. The comparison shall focus on the beneficial and adverse consequences, both direct and indirect, on the existing environment, the future environment, and individual sensitive environmental issues that are identified by project management or through public participation conducted under this Section. The comparison shall also include an analysis of all of the following factors:
 - a. Land use and other social parameters, including recreation and open-space considerations.
 - b. Consistency with population projects used to develop state implementation plans under the Clean Air Act, 42 U.S.C. 7401 through 7671.
 - c. Cumulative impacts, including anticipated community growth within the project study area.
 - d. Other anticipated public works projects, including coordination with such projects.

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5. A full range of relevant impacts of the project, including any irreversible or irretrievable commitments of resources to the project and the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity.
 6. Proposed structural and nonstructural measures to mitigate or eliminate adverse effects on the human and natural environments. Among other measures, structural provisions include changes in project design, size, and location; and nonstructural provisions include staging facilities, monitoring and enforcement of environmental rules, and local commitments to develop and enforce land use rules.
- F. Upon completion of the EA required by subsection (E), the Authority shall determine whether an environmental impact statement (EIS) is necessary.
1. The Authority shall prepare an EIS pursuant to subsection (G) if any of the following conditions exist.
 - a. The project is known or expected to have a significant adverse effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions.
 - b. The project is known or expected to directly or indirectly adversely affect recognized cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, and aquifer recharge zones, or other resource areas.
 - c. The project is likely to cause significant public controversy or is known or expected not to be cost effective.
 - d. The project discharges into a body of water where the present protected or designated use is not being met or is being challenged as inadequate to protect existing uses, and the discharge will not be of sufficient quality or quantity to meet the requirements of these uses.
 2. If the Authority determines pursuant to subsection (F) (1) that an EIS is not necessary, the Authority shall issue a finding of no significant impact (FNSI). The FNSI shall be accompanied by the submitted EA with an attached memorandum from the Authority explaining any changes made to the submitted document. Upon issuance of the FNSI, the project may proceed under the other requirements of this Article.
- G. An EIS required by subsection (F)(1) shall be prepared as follows:
1. The Authority shall 1st prepare and distribute a Notice of Intent.
 2. As soon as possible after the publication of the Notice of Intent required by subsection (G)(1), the Authority shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the applicant, and other interested parties. At the meeting, the scope of the EIS shall be determined by considering a number of factors, including all of the following:
 - a. The significant issues to be analyzed in depth in the EIS.
 - b. The preliminary range of alternatives to be considered.
 - c. The potential cooperating agencies and information or analyses that may be needed from cooperating agencies or other parties.
 - d. The method for EIS preparation and the public participation strategy.
 3. Upon completion of the process described in subsection (G)(2), the Authority shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified. Additional issues may also be addressed, or others eliminated, and the reasons documented as part of the EIS.
 4. After the analysis of issues is conducted pursuant to subsection (G)(3), the Authority shall issue a draft EIS for public comment. Following public comment pursuant to subsection (I), the Authority shall prepare a final EIS, consisting of all of the following:
 - a. The draft EIS.
 - b. Comments received on the draft EIS.
 - c. A list of persons commenting on the draft EIS.
 - d. The Authority's responses to significant comments received.
 - e. A determination of consistency with the Certified Water Quality Management Plan.
 - f. Any other information added by the Authority.
- H. After a final EIS has been issued under subsection (G), the Authority shall prepare and issue a record of decision (ROD) containing the Authority's decision whether to proceed or not proceed with a project. A ROD issued with a decision to proceed shall include mitigation measures derived from the EIS process. A ROD issued with a decision not to proceed shall preclude the project from receiving financial assistance under this Article.
- I. Any project awaiting financial assistance which has a 5 or more year-old categorical exclusion, FNSI, or ROD under this Section shall be subject to an environmental reevaluation. The Authority shall reevaluate the project, environmental conditions, and public views and, in writing, either reaffirm or modify its original decision. Any new information used by the Authority in making its determination shall be included.
- J. Public notice and participation under this Section shall be conducted as follows:
1. If a categorical exclusion is granted under subsection (B), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned.
 2. If a FNSI is issued under subsection (F)(2), the Authority shall provide public notice pursuant to R18-1-401(A) that the FNSI is available for public review. The notice shall provide that comments on the FNSI may be submitted to the Authority for a period of 30 days from the date of publication of the notice. If no comments are received, the FNSI shall immediately become effective.
 3. If a Notice of Intent is prepared and distributed under subsection (G)(1), the Authority shall publish it as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned.
 4. If a draft EIS is issued under subsection (G)(4), the Authority shall provide public notice pursuant to A.A.C. R18-1-401(A) that the draft EIS is available for public review. The notice shall provide that comments on the draft EIS may be submitted to the Authority for a period of 30 days from the date of publication of the notice. In addition, if the Authority determines that a project may be controversial, the notice shall provide for a general public hearing to receive public comment pursuant to A.A.C. R18-1-401(B).

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5. If the Authority reaffirms or revises a decision pursuant to subsection (I), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in 1 or more newspapers of general circulation in the county or counties concerned.
6. When public notice is required under this subsection, the Authority shall also provide written notice to the applicable Designated Water Quality Management Planning Agency.

R18-15-108. Readiness to Proceed

- A. The Board shall review each applicant's readiness to proceed with the proposed project.
- B. The Board shall use all of the following readiness criteria to classify projects (the higher the number, the higher the level of readiness):
 1. Level 1 -- The applicant has received authorization to enter into long-term indebtedness.
 2. Level 2 --
 - a. The Board has determined all of the following:
 - i. Legal capability pursuant to R18-15-103.
 - ii. Financial capability pursuant to R18-15-104.
 - iii. Technical capability pursuant to R18-15-105.
 - iv. Managerial and institutional capability pursuant to R18-15-106.
 - b. The applicant has completed the requirement for Level 1.
 3. Level 3 --
 - a. The plans and specifications have been reviewed and approved by the Department or the Department's designee.
 - b. The applicant has completed the requirements for Levels 1 and 2.
 4. Level 4 --
 - a. The applicant is in the process of obtaining all applicable permits and approvals required by federal, state, and local authorities.
 - b. The applicant has completed the requirements for Levels 1, 2, and 3.
 5. Level 5 --
 - a. The applicant has obtained all applicable permits and approvals required by federal, state, and local authorities.
 - b. The applicant has completed the requirements for Levels 1, 2, 3, and 4.
 6. Level 6 --
 - a. The applicant has received and accepted bids for the project or, with prior approval from the Board, the applicant has commenced construction.
 - b. The applicant has completed the requirements for Levels 1, 2, 3, 4, and 5.
- C. As applicable, until the environmental review process described in R18-15-107 is completed, the Board shall limit payments of financial assistance to preconstruction activity.
- D. Until all applicable permits and approvals required by federal, state, and local authorities are obtained, the Board shall limit payments of financial assistance to preconstruction activity.

R18-15-109. Interest Rate Determinations

- A. In establishing interest rates for financial assistance made under this Chapter, the Authority:
 1. Shall consider the interest rate on bonds issued by the Authority, prevailing market rates, the recommendations of financial advisors, equity growth, and asset growth;

2. Shall not establish a rate which exceeds prevailing market rates for similar types of financial assistance;
3. Shall not establish a rate which is less than is needed to retire the Authority's bonds.

- B. The Authority shall establish interest rates on a loan by loan basis. Such determinations shall be adopted and amended as required by the Board at public meetings of the Board.

R18-15-110. Disbursements and Repayments

- A. The Authority shall ensure that disbursements are consistent with the financial assistance agreement and incurred project expenses.
- B. The Authority shall charge a late fee for any loan repayment 30 days past the due date and every 30 days thereafter. The authority shall refer any loan repayment over 90 days past due to the Office of the Attorney General for appropriate action pursuant to A.R.S. § 49-375(J).
- C. The recipient shall maintain a project account in accordance with generally accepted government accounting standards. After reasonable notice by the Board, the recipient shall make available any project records reasonably required to determine compliance with the provisions of this Article and the financial assistance agreement.

R18-15-111. Administration

- A. The Board may use up to 4% of federal capitalization grant awards to pay the reasonable costs of administering the Clean Water Revolving Fund and the Drinking Water Revolving Fund.
- B. The Board may also require a recipient to pay a proportionate share of the expenses of the Authority's operating costs.

R18-15-112. Disputes

- A. Any party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken pursuant to this Chapter may file a formal letter of dispute with the Executive Director. Within 30 days of receipt of a dispute letter, the Authority shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.
- B. Any party filing a dispute pursuant to subsection (A) that disagrees with a preliminary decision of the Authority may file a formal letter of appeal with the Board, provided such letter is received by the Executive Director not more than 15 days after the receipt by the party of the preliminary decision.
- C. The Board shall issue a final decision on issues appealed to it pursuant to subsection (B) not more than 60 days after receipt of the appeal.

ARTICLE 2. CLEAN WATER REVOLVING FUND

R18-15-201. Types of Financial Assistance Available

- A. The Authority may use the Clean Water Revolving Fund for any of the following purposes:
 1. Financial assistance, which includes any of the following:
 - a. Loans consistent with § 603(d)(1) of the Clean Water Act, 33 U.S.C. 1383;
 - b. The purchase or refinancing of local debt obligations which were incurred after March 7, 1985, if building began after that date;
 - c. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;
 - d. Security as a source of repayment of principal and interest on bonds issued by the Authority provided

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that the net proceeds of the bonds are deposited in the fund;

- e. Guarantees of debt obligations by governmental units which are issued to finance eligible projects.
- 2. Investments to earn interest to be deposited into the fund.
- 3. Payments of costs to administer the fund.
- B. The Board shall describe projects and proposed financial assistance in the Clean Water Revolving Fund Intended Use Plan, developed pursuant to R18-15-203.

R18-15-202. Eligibility Requirements for Financial Assistance

- A. To be eligible to receive financial assistance an applicant shall propose a project to: design, construct, acquire, improve or refinance a publicly owned wastewater treatment facility or projects listed on the Nonpoint Source Management Plan.
- B. A project eligible under subsection (A) of this Section shall also meet all of the following applicable requirements prior to receiving financial assistance:
 - 1. The project shall appear on the Clean Water Revolving Fund Priority List developed pursuant to R18-15-204.
 - 2. The applicant shall demonstrate legal capability pursuant to R18-15-103.
 - 3. The applicant shall demonstrate financial capability pursuant to R18-15-104.
 - 4. The applicant shall demonstrate technical capability pursuant to R18-15-105.
 - 5. The applicant shall demonstrate managerial and institutional capability pursuant to R18-15-106.
 - 6. The applicant shall demonstrate completion of the environmental review process pursuant to R18-15-107.
 - 7. The applicant shall demonstrate readiness to proceed pursuant to R18-15-108.
 - 8. The applicant shall obtain or be in the process of obtaining all permits and approvals required by federal, state, and local authorities.
 - 9. The applicant shall ensure that the project is consistent with the Certified Water Quality Management Plan.
 - 10. For nonpoint source projects, the applicant shall ensure that the project is consistent with § 319 and Title VI of the Clean Water Act, 33 U.S.C. 1329, and 1381 through 1387.
- C. The Board shall provide financial assistance to eligible governmental units for proposed projects in priority order according to the priority list developed pursuant to R18-15-204. If the Board determines that an applicant will not be able to proceed with a project in a manner consistent with the Clean Water Revolving Fund Intended Use Plan, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has been bypassed. The Board shall replace the bypassed project with the next project on the Clean Water Revolving Fund Priority List in rank order that is ready to accept financial assistance.

R18-15-203. Clean Water Revolving Fund Intended Use Plan. The Board shall publish an Intended Use Plan for each year in which it anticipates that it will provide financial assistance for eligible projects. At a minimum the Intended Use Plan shall identify the projects by eligible applicant, project name, type of project, type of financial assistance, amount of financial assistance, and estimated interest rates to be charged. The Intended Use Plan shall also identify 1st use and equivalency projects. The Intended Use Plan shall be prepared after providing for public comment and review. When an Intended Use Plan is to be submitted as of the documents required to obtain a grant under Title VI of the Clean

Water Act, 33 U.S.C. 1381 through 1387, the Intended Use Plan shall include any additional information required by federal law.

R18-15-204. Clean Water Revolving Fund Priority List

- A. Each year the Board shall adopt the Priority List for the next 12-month period. The Board shall not adopt a new list for years where funds are not adequate to assist any projects.
- B. When the Priority List is required pursuant to subsection (A), the Board shall rank the projects by priority class (alphabetized with "A" as the highest priority class), priority points, and year.
- C. An applicant, desiring placement on the Priority List, shall make its request for placement of 1 or more proposed projects on or before a date specified by the Board. When requesting placement on the Priority List, an applicant shall submit information within an application format specified by the Board.
- D. The Board shall prepare a draft Priority List. In developing a draft Priority List, the Board shall consider all requests submitted under subsection (C), all requests made by regulatory authorities, all plans prepared pursuant to the Clean Water Act, 33 U.S.C. 1251 through 1387, and the most recently adopted Priority List.
- E. The Board shall hold a public meeting to receive comments on the draft Priority List. The Board shall publish a notice of the public meeting in newspapers statewide at least 21 days prior to the meeting date and make copies of the draft Priority List available to the public at least 14 days prior to the meeting date.
- F. The Board shall consider all comments submitted in writing prior to the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but prior to the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. The Board shall summarize all of the comments received, prepare responses, and adopt the Priority List to be used to administer the Clean Water Revolving Fund during the following fiscal year.
- G. The Board shall make additions or modifications to the Priority List when 1 or more of the following conditions are met:
 - 1. The project meets the criteria for Priority Class A specified in R18-15-205(B).
 - 2. Funds are available to cover the cost of the project and to honor funding commitments made to other projects or needed to support financial arrangements made to sell bonds for the state match.
 - 3. The additions or modifications are made by the Board at a public meeting.
- H. After an opportunity for public comment at a public meeting, the Board may remove a project from the Priority List under any 1 of the following circumstances:
 - 1. The project has received all financial assistance from the fund requested by the applicant.
 - 2. The project has been financed with long-term indebtedness from another source.
 - 3. The project is no longer an eligible project.
 - 4. The applicant requests removal.
- I. The Board shall retain a project on the Priority List in its assigned priority ranking if it is bypassed pursuant to R18-15-202(C).

R18-15-205. Clean Water Revolving Fund Priority Classes

- A. The Board shall evaluate each project on the Priority List and place it into a priority class. The Board may place major portions of a project into different priority classes. The Board

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shall consider separation of a project into different priority classes when requested by the applicant or when the Board determines that available funds are inadequate to provide assistance to projects critical to the public health or to water quality. The Board may reevaluate project priority classes under R18-15-204(G) when supported by information such as facility plans, feasibility studies, enforcement actions, and environmental reviews conducted under R18-15-107. If the Board determines that the problem being addressed by a project can be corrected by proper operation and maintenance of existing facilities, the project is ineligible for financial assistance.

B. Class A -- The Board may designate a project as Priority Class A if both the following conditions exist:

1. The goal of the project is to eliminate either of the following:
 - a. An environmental nuisance as defined in A.R.S. § 49-141.
 - b. A public health hazard declared by a regulatory authority.
2. Corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:
 - a. An administrative order issued by a regulatory authority.
 - b. A court order or decision.
 - c. A voluntary compliance agreement with a regulatory authority.
 - d. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
 - e. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.

C. Class A: Continuing Construction Projects -- In addition to R18-15-205(B), the Board may designate a project as Priority Class A if the project received funding in a prior fiscal year, the Board entered into a multi-fiscal year funding commitment with the applicant, and the project received at least 20 points under R18-15-206(H).

D. Class B -- The Board may designate a project as Priority Class B if the goal of the project is to eliminate a violation of water quality standards documented by official reports, data, or findings of a regulatory authority and corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:

1. An administrative order issued by a regulatory authority.
2. A court order or decision.
3. A voluntary compliance agreement with a regulatory authority.
4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
5. A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.

E. Class C -- The Board may designate a project as Priority Class C if the goal of the project is to correct water quality which violates applicable permit requirements. The Board shall ensure that the violations are documented by required or special monitoring reports which confirm that the discharge limits for a parameter were exceeded either 3 consecutive months during the past year or any 4 months during the past year.

F. Class D -- The Board may designate a project as Priority Class D if any 1 of the following conditions exists:

1. The project will provide capacity required to serve existing needs.
2. The project is designed for wastewater reuse, to conserve water, or to recharge wastewater.
3. The project is necessary to remedy interceptors which are overloaded.

G. Class E -- The Board may designate a project which does not receive a designation pursuant to subsections (B) through (F) of this Section as Priority Class E, if the project is for future growth only or if the project has been financed from another source of long-term indebtedness.

R18-15-206. Clean Water Revolving Fund Priority List Ranking Criteria

A. The Board shall rank projects within priority classes using priority values obtained from the following formula:

$$PV = VF + TD + CL + CW + CI + LFC + PYF + CR$$

where:

PV = Priority Value

VF = Violation Factor

TD = Treatment and Disposal

CL = Collection Lines

CW = Classification of Waters

CI = Conservation Index

LFC = Local Fiscal Capacity

PYF = Prior Year Funding

CR = Consolidation and Regionalization

B. Violation Factor (VF) -- Whenever the Board determines that a project seeks to correct a violation of a water quality standard or a violation of a condition contained in a valid water quality permit issued by a regulatory authority, the Board shall award VF points. The Board shall use information from documents obtained under R18-15-205(B) and R18-15-205(D) to assign VF points. VF points are awarded as follows up to a maximum of 100 points:

1. 40 points for nitrates, disease organisms or indicators, or conditions which create a threat to an endangered species.
2. 30 points for pathogens, heavy metals, and volatile organic compounds (VOC's).
3. 20 points for biochemical oxygen demand (BOD), suspended solids, or phosphates.
4. 10 points for pH, turbidity, or temperature.

C. Treatment and Disposal (TD) -- If an applicant is seeking financial assistance to construct, upgrade, or rehabilitate a treatment or disposal process, the Board shall award TD points up to a maximum of 30 points with only 1 set of points awarded as follows:

1. 30 points to provide additional treatment capacity to meet existing need.
2. 30 points to construct new treatment capacity for an unsewered area.
3. 25 points to provide additional disposal capacity.
4. 20 points to upgrade treatment facilities to more stringent standards.
5. 15 points to remedy existing design inadequacies.
6. 10 points for projects which will resolve existing operation and maintenance violations.
7. 5 points for projects which will expand treatment capacity to accommodate future growth.

D. Collection Lines (CL) -- If an applicant is seeking financial assistance for a collection line project, the Board shall award CL points up to a maximum of 30 points with only 1 set of points awarded as follows:

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1. 30 points to extend service to an existing unsewered area where a documented water quality standard violation exists.
 2. 25 points to repair, rehabilitate or replace existing collection lines.
 3. 20 points to extend service to an existing unsewered area.
 4. 15 points to replace collection lines to accommodate existing growth.
 5. 5 points to install new collection lines to accommodate future growth.
- E. Classification of Waters (CW) --** The Board shall award points for either surface water or groundwater categories but not both. The most stringent protected use within each category shall be the sole determiner of the CW points. CW points are awarded as follows up to a maximum of 30 points:
1. For surface water, CW points shall be awarded for discharges into a water body assigned 1 of the following protected use classifications under R18-11-101:
 - a. 30 points for "full body contact" or "domestic water source." For purposes of this subsection, a project that is not within either of those classifications may receive 30 points if the discharge is into a water body classified as a "unique water" defined in R18-11-101.
 - b. 20 points for "aquatic and wildlife--(cold water fishery)"
 - c. 15 points for "aquatic and wildlife" that is not a cold water fishery.
 - d. 10 points for "incidental human contact"
 2. For groundwater, CW points shall equal 30 points for discharges into an aquifer.
- F. Conservation Index (CI) --** The Board shall award Conservation Index points up to a maximum of 45 points as follows:
1. 30 points if the project will reclaim, reuse, or recharge at least 51% of treated wastewater consistent with state law.
 2. 15 points if the project will productively recycle wastewater constituents.
 3. 0 points if the project will not reclaim, reuse, or recharge wastewater.
- G. Local Fiscal Capacity (LFC) --** The Board shall award LFC points up to a maximum of 100 points as follows:
1. Median Household Income (MHI) -- The Board shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:
 - a. 40 points if the area's MHI is less than 25% of the State's MHI.
 - b. 30 points if the area's MHI is between 25% and 50% of the State's MHI.
 - c. 20 points if the area's MHI is between 51% and 75% of the State's MHI.
 - d. 10 points if the area's MHI is between 76% and 100% of the State's MHI.
 - e. 0 points if the area's MHI is more than 100% of the State's MHI.
 2. User Fees -- The Board shall divide the applicant's proposed residential user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:
 - a. 20 points if the rates are more than 2% of the area's MHI.
 - b. 10 points if the rates are between 1% and 2% of the area's MHI.
 - c. 0 points if the rates area is less than 1% of the area's MHI.
 3. Investment -- The Board shall divide existing indebtedness, existing investments, and proposed indebtedness by the service area's MHI (Investment/ Area MHI) to award points as follows:
 - a. 20 points if the existing and proposed investment is more than 1% of the area's MHI.
 - b. 10 points if the existing and proposed investment is between .5% and 1% of the area's MHI.
 - c. 0 points if the existing and proposed investment is less than .5% of the area's MHI.
 4. Cost Effectiveness (CE) -- The Board shall divide the estimated costs of construction by the number of benefitting connections (Construction Costs/# of Benefitting Connections) to award points as follows:
 - a. 20 points if CE is less than \$2,500 per benefitting connection.
 - b. 10 points if CE is between \$2,500 and \$5,000 per benefitting connection.
 - c. 0 points if CE is more than \$5,000 per benefitting connection.
- H. Prior Year Funding (PYF) --** The Board shall award PYF points up to a maximum of 30 points with only 1 set of points awarded as follows:
1. 30 points if the applicant requests additional financial assistance for a multi-year construction project which received financial assistance from the Authority in a previous fiscal year.
 2. 20 points if the applicant requests additional financial assistance to offset actual costs or justified overruns.
 3. 10 points if the applicant requests financial assistance to construct a project which received planning and design financial assistance from the Authority in a previous fiscal year.
 4. -10 points if the applicant requests financial assistance to offset cost overruns.
- I. Consolidation & Regionalization (CR) --** The Board shall award CR points up to a maximum of 50 points as follows:
1. 20 points if the applicant is consolidating the physical facilities of existing multiple facilities.
 2. 20 points if the applicant is extending service to existing areas currently served by another facility.
 3. 5 points if the applicant is consolidating the operations of existing multiple facilities.
 4. 5 points if the applicant is consolidating the ownership of existing multiple facilities.
- J. The Board may use the most recent United States census data to determine the applicant's and the state's median household income. If the Board or the applicant determines that this data is insufficient, the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. If the applicant's service area is included in more than income area, the Board may use an average of income areas to define the service area's median household income.**
- R18-15-207. Project Construction**
- A. The Department shall not issue an Approval to Construct to an applicant or recipient until all of the following have occurred:**
1. An on-site inspection by the Department.
 2. The development by the applicant or recipient of a sludge management use and disposal plan.
 3. A review of all set-back requirements by the Department.

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- B.** Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:
1. All easements and rights-of-way have been obtained.
 2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ 41-2501 et seq.
 3. All required approvals and permits have been obtained from the following entities:
 - a. The Department including the requirements contained in 18 A.A.C. 9.
 - b. Applicable federal, state, and local authorities as related to:
 - i. Leases.
 - ii. Zoning permits.
 - iii. Building permits.
 - iv. Flood plain approvals.
 - v. Air quality permits.
 - vi. Solid waste approvals.
- C.** During construction of wastewater treatment facilities, the recipient shall do all the following:
1. Conduct work in compliance with the requirements of 18 A.A.C. 9.
 2. Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.
- D.** Upon project completion, all of the following requirements shall be satisfied:
1. The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 9.
 2. The recipient shall accept the project in writing.
 3. Any required operation and maintenance manual shall be completed.
 4. As-built plans and specifications shall be submitted to the Authority and the recipient.
- E.** Within 1 year after project completion, the recipient shall certify that the wastewater treatment facility meets design specifications and all effluent limitations. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the wastewater treatment facility does not meet design standards or effluent limits and what will be done to correct the deficiency, together with a schedule for the corrective actions.

R18-15-208. Clean Water Revolving Fund Requirements

- A.** The Board shall identify Clean Water Revolving Fund requirements applicable to each project pursuant to the Clean Water Act, 33 U.S.C. 1251 through 1387.
- B.** If applicable, the applicant shall design a user charge system to produce adequate revenues for operation and maintenance, including replacement. The user charge system shall provide that a user discharging pollutants that cause an increase in the cost of managing the effluent or sludge from the treatment works shall pay proportionately for the increased cost. An applicant's user charge system, based on actual or estimated use of wastewater treatment services, shall provide that each user or user class pays its proportionate share of operation and maintenance, including replacement costs of treatment works within the applicant's service area, based on the user's proportionate contribution to the total wastewater loading from all users or user classes.
- C.** After a project is completed, the governmental unit shall use revenue from the project, including the sale of sludges, gases, liquids, crops, or revenue from leases, to offset the costs of operation and maintenance.

- D.** The applicant shall certify that it has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kick-backs, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning or design work on a wastewater treatment facility project.
- E.** First use and equivalency projects shall comply with the provisions of the Civil Rights Act of 1964, Pub. L. 88-352, 42 U.S.C. 2000(a) to 2000(h)(6), and all other applicable federal laws.

ARTICLE 3: DRINKING WATER REVOLVING FUND

R18-15-301. Types of Financial Assistance Available

- A.** The Authority may use the Drinking Water Revolving Fund for any of the following purposes:
1. Financial assistance, which includes any 1 of the following:
 - a. Loans consistent with § 1452(a)(2)(f) of the Safe Drinking Water Act, 42 U.S.C. 300(j)(12).
 - b. The purchase or refinance of local debt obligations of political subdivisions which were incurred after July 1, 1993, if building began after that date.
 - c. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates.
 - d. Security as a source of repayment of principal and interest on bonds issued by the Authority provided that the net proceeds of the bonds are deposited in the fund.
 - e. Guarantees of debt obligations by governmental units which are issued to finance eligible projects.
 2. Investments to earn interest to be deposited into the fund.
 3. Payments of costs to administer the fund.
 4. Other uses authorized by the Safe Drinking Water Act, 42 U.S.C. 300(f) to 300(j)(25).
- B.** The Board shall describe projects and proposed financial assistance in the Drinking Water Revolving Fund Intended Use Plan, developed pursuant to R18-15-303.
- C.** Pursuant to the Safe Drinking Water Act, 42 U.S.C. 300(f) to 300(j)(25), 15% of available Drinking Water Revolving Fund financial assistance shall be available solely for drinking water facilities serving fewer than 10,000 persons consistent with the requirements for financial assistance within Article 3. On an annual basis, if there are insufficient requests for Drinking Water Revolving Fund financial assistance from drinking water facilities serving fewer than 10,000 persons, the Board may direct the remainder of the 15% to all other drinking water facilities requesting financial assistance consistent with the requirements within Article 3.

R18-15-302. Eligibility Requirements for Financial Assistance

- A.** To be eligible to receive financial assistance an applicant shall be a drinking water facility as defined by A.R.S. § 49-371. An applicant shall propose a project to: plan, design, construct, acquire, or improve a drinking water facility, or refinance an eligible drinking water facility.
- B.** A project eligible under subsection (A) shall also meet all of the following requirements prior to receiving financial assistance:
1. The project shall appear on the Drinking Water Revolving Fund Priority List developed pursuant to R18-15-304.
 2. The applicant shall demonstrate legal capability pursuant to R18-15-103.

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3. The applicant shall demonstrate financial capability pursuant to R18-15-104.
 4. The applicant shall demonstrate technical capability pursuant to R18-15-105.
 5. The applicant shall demonstrate managerial and institutional capability pursuant to R18-15-106.
 6. The applicant shall demonstrate completion of the environmental review process pursuant to R18-15-107.
 7. The applicant shall demonstrate readiness to proceed pursuant to R18-15-108.
 8. The applicant shall obtain or be in the process of obtaining all permits and approvals required by federal, state, and local authorities.
- C. The Board shall provide financial assistance to eligible applicants for proposed projects in priority order according to the priority list developed pursuant to R18-15-304. If the Board determines that an applicant will not be able to proceed with a project in a manner consistent with the Drinking Water Revolving Fund Intended Use Plan, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has been bypassed. The Board shall replace the bypassed project with the next project on the Drinking Water Revolving Fund Priority List in rank order that is ready to accept financial assistance.

R18-15-303. Drinking Water Revolving Fund Intended Use Plan

The Board shall publish an Intended Use Plan for each year in which it anticipates that it will provide financial assistance for eligible projects. At a minimum, the Intended Use Plan shall identify the projects by eligible applicant, project name, type of project, type of financial assistance, amount of financial assistance, population served by the project, and estimated interest rates to be charged. The Intended Use Plan shall be prepared after providing for public comment and review. When an Intended Use Plan is to be submitted as of the documents required to obtain a grant under the Safe Drinking Water Act, 42 U.S.C. 300(f) to 300(j)(25), the Intended Use Plan shall include any additional information required by federal law.

R18-15-304. Drinking Water Revolving Fund Priority List

- A. Each year the Board shall adopt the Priority List for the next 12-month period. The Board shall not adopt a new list for years when funds are not adequate to assist any projects.
- B. When the Priority List is required pursuant to subsection (A), the Board shall rank the projects by priority class (alphabetized with A as the highest priority class), priority points, and year.
- C. An applicant desiring placement on the Priority List shall make its request for placement of 1 or more proposed projects on or before a date specified by the Board. When requesting placement on the Priority List, an applicant shall submit information within an application format specified by the Board.
- D. The Board shall prepare a draft Priority List. In developing a draft Priority List, the Board shall consider all requests submitted under subsection (C), all requests made by regulatory authorities, all plans prepared pursuant to the Safe Drinking Water Act 42 U.S.C. 300(f) to 300(j)(25), and the most recently adopted Priority List.
- E. The Board shall hold a public meeting to receive comments on the draft Priority List. The Board shall publish a notice of the public meeting in newspapers statewide at least 21 days prior to the meeting date and make copies of the draft Priority List available to the public at least 14 days prior to the meeting date.

- F. The Board shall consider all comments submitted in writing prior to the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to the meeting but prior to the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. The Board shall summarize all of the comments received, prepare responses, and adopt the Priority List to be used to administer the Drinking Water Revolving Fund during the following fiscal year.
- G. The Board shall make additions or modifications to the Priority List when all of the following conditions are met:
 1. The project meets the criteria for Priority Class A specified in R18-15-305(B) and funds are available to cover the cost of the project and to honor funding commitments made to other projects.
 2. The additions or modifications are made by the Board at a public meeting.
- H. After an opportunity for public comment at a public meeting, the Board may remove a project from the Priority List under any 1 of the following circumstances:
 1. The project has received all financial assistance from the fund requested by the applicant.
 2. The project has been financed with long-term indebtedness from another source.
 3. The project is no longer an eligible project.
 4. The applicant requests removal.
- I. The Board shall retain a project on the Priority List, and work with each system in its assigned priority ranking if it is bypassed pursuant to R18-15-302(C).

R18-15-305. Drinking Water Revolving Fund Priority Classes

- A. The Board shall evaluate each project on the Priority List and place it into a priority class. The Board may place major portions of a project into different priority classes. The Board shall consider separation of a project into different priority classes when requested by the applicant or when the Board determines that available funds are inadequate to provide assistance to projects critical to the public health or to water quality. The Board may reevaluate project priority classes under R18-15-304(G) if supported by information such as facility plans, feasibility studies, enforcement actions, and environmental reviews conducted under R18-15-107. If the Board determines that the problem being addressed by a project can be corrected by proper operation and maintenance of existing facilities, the project is ineligible for financial assistance.
- B. Class A -- The Board may designate a project as Priority Class A if continuous or intermittent violations of the national primary drinking water standards exist involving acutely toxic contaminants. The violations shall be documented by official reports, data, or findings of a regulatory authority. Corrective action or mitigation measures shall be initiated and evidenced by 1 or more of the following:
 1. An administrative order issued by a regulatory authority.
 2. A court order or decision.
 3. A voluntary compliance agreement with a regulatory authority.
 4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
 5. A voluntary corrective action plan with a regulatory agency implemented by the applicant and evidenced by restrictions or moratoriums.

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- C. Class A: Continuing Construction Projects -- In addition to R18-15-305(B), the Board may designate a project as Priority Class A if the project received funding in a prior fiscal year, the Board entered into a multi fiscal year funding commitment with the applicant, and the project received at least 20 points under R18-15-306(E).
- D. Class B -- The Board may designate a project as Priority Class B if a violation of the national primary drinking water standards involves non-acutely toxic contaminants documented by official reports, data, or findings of a regulatory authority and corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:
 - 1. An administrative order issued by a regulatory authority.
 - 2. A court order or decision.
 - 3. A voluntary compliance agreement with a regulatory authority.
 - 4. The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
 - 5. A voluntary corrective action plan with a regulatory authority implemented by the applicant and evidenced by restrictions or moratoriums.
- E. Class C -- The Board may designate a project as Priority Class C if the goal of the project is to upgrade or rehabilitate existing delivery capability or existing facility design in accordance with the Safe Drinking Water Act Amendments.
- F. Class D -- The Board may designate a project as Priority Class D if the goal of the project is to consolidate or regionalize service of previously separate drinking water facilities.
- G. Class E -- The Board may designate a project which does not receive a designation pursuant to subsections (B) through (F) as Priority Class E.

R18-15-306. Drinking Water Revolving Fund Priority List Ranking Criteria

- A. The Board shall rank projects within priority classes using priority values obtained from the following formula:

$$PV = HC + CFS + LFC + PYF + CR$$

where:
 PV = Priority Value
 HC = Health Criteria
 CFS = Condition of Facilities and Sources
 LFC = Local Fiscal Capacity
 PYF = Prior Year Funding
 CR = Consolidation and Regionalization
- B. Health Criteria (HC) -- Whenever the Board determines that a project seeks to correct a violation of the national primary drinking water standards, the Board shall award HC points. The Board shall use information from documents obtained under R18-15-305(B) and R18-15-305(D) to assign HC points. The Board shall award HC points up to a maximum of 100 points with only 1 set of points awarded as follows:
 - 1. 100 points for continuous violations of the national primary drinking water standards involving acutely toxic contaminants.
 - 2. 80 points for intermittent violations of the national primary drinking water standards involving acutely toxic contaminants.
 - 3. 60 points for continuous violations of the national primary drinking water standards involving non-acutely toxic contaminants.
 - 4. 40 points for intermittent violations of the national primary drinking water standards involving non-acutely toxic contaminants.
- C. Condition of Facility and Source (CFS) -- If an applicant is seeking financial assistance to construct, upgrade, or rehabilitate a drinking water facility, the Board shall award CFS points up to a maximum of 125 points as follows:

1. 20 points to secure at least 51% of new eligible source capacity with a renewable source or 10 points to secure at least 51% of new eligible source capacity with a non-renewable source.

- 2. 20 points to construct, upgrade, or rehabilitate a component of the water treatment facility, other than disinfection equipment.
- 3. 20 points to upgrade or rehabilitate capacity of an existing eligible storage, pumping, or distribution facility.
- 4. 20 points to upgrade or rehabilitate existing, required disinfection equipment.
- 5. 15 points to protect an existing water source from an existing or future contamination threat, the project having been funded under 42 U.S.C. 300(j).
- 6. 15 points to upgrade or rehabilitate an existing well or spring box.
- 7. 10 points to repair an existing transmission or distribution system.
- 8. 5 points to reduce a taste, odor or corrosion problem at an existing facility.

D. Local Fiscal Capacity (LFC) -- The Board shall award LFC points up to a maximum of 100 points as follows:

- 1. Median Household Income (MHI) -- The Board shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:
 - a. 40 points if the area's MHI is less than 25% of the State's MHI.
 - b. 30 points if the area's MHI is between 25% and 50% of the State's MHI.
 - c. 20 points if the area's MHI is between 51% and 75% of the State's MHI.
 - d. 10 points if the area's MHI is between 76% and 100% of the State's MHI.
 - e. 0 points if the area's MHI is more than 100% of the State's MHI.
- 2. User Fees -- The Board shall divide the applicant's proposed user fees, rates, and charges by the service area's MHI (Proposed User Fees, Rates and Charges/Area MHI) to award points as follows:
 - a. 20 points if the rates are more than 2% of the area's MHI.
 - b. 10 points if the rates are between 1% and 2% of the area's MHI.
 - c. 0 points if the rates are less than 1% of the area's MHI.
- 3. Investment -- The Board shall divide existing indebtedness, existing investments, and proposed indebtedness by service area's MHI (Investment/ Area MHI) to award points as follows:
 - a. 20 points if the existing and proposed investment is more than 1% of the area's MHI.
 - b. 10 points if the existing and proposed investment is between .5% and 1% of the area's MHI.
 - c. 0 points if the existing and proposed investment is less than .5% of the area's MHI.
- 4. Cost Effectiveness (CE) -- The Board shall divide the estimated costs of construction by the number of benefitting connections (Construction Costs/# of Benefitting Connections) to award points as follows:
 - a. 20 points if CE is less than \$2,500 per benefitting connection.

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- b. 10 points if CE is between \$2,500 and \$5,000 per benefitting connection.
- c. 0 points if CE is more than \$5,000 per benefitting connection.
- E. Prior Year Funding (PYF) -- The Board shall award PYF points up to a maximum of 30 points with only 1 set of points awarded as follows:
 - 1. 30 points if the applicant requests additional financial assistance for a multi-year construction project which received financial assistance from the Authority in a previous fiscal year.
 - 2. 20 points if the applicant requests additional financial assistance to offset actual costs or justified overruns.
 - 3. 10 points if the applicant requests financial assistance to construct a project which received planning and design financial assistance from the Authority in a previous fiscal year.
 - 4. -10 points if the applicant requests financial assistance to offset cost overruns.
- F. Consolidation & Regionalization (CR) -- The Board shall award CR points up to a maximum of 50 points as follows:
 - 1. 20 points if the applicant is consolidating the physical facilities of existing multiple facilities.
 - 2. 20 points if the applicant is extending service to existing areas currently served by another facility.
 - 3. 5 points if the applicant is consolidating the operations of existing multiple facilities.
 - 4. 5 points if the applicant is consolidating the ownership of existing multiple facilities.
- G. The Board may use the most recent United States census data to determine the applicant's and the state's median household income. If the Board or the applicant determines that this data is insufficient, the applicant shall use a reliable and impartial entity to conduct an income survey of the applicant's service area. If the applicant's service area is included in more than income area, the Board may use an average of income areas to define the service area's median household income.

R18-15-307. Project Construction

- A. The Department shall not issue an Approval to Construct to an applicant or recipient until the Department has conducted an on-site inspection.
- B. Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:
 - 1. All easements and rights-of-way have been obtained.
 - 2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ 41-2501 et seq.
 - 3. All required approvals and permits have been obtained from the following entities:
 - a. The Department including the requirements contained in 18 A.A.C. 4.
 - b. Applicable federal, state, and local authorities as related to:
 - i. Leases.
 - ii. Zoning permits.
 - iii. Building permits.
 - iv. Flood plain approvals.
 - v. Air quality permits.
 - vi. Solid waste approvals.
- C. During construction of drinking water facilities, the recipient shall do all of the following:
 - 1. Conduct work in compliance with the requirements of 18 A.A.C. 4.

- 2. Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.
- D. Upon project completion, all of the following requirements shall be satisfied:
 - 1. The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 4.
 - 2. The recipient shall accept the project in writing.
 - 3. Any required operation and maintenance manual shall be completed.
 - 4. As-built plans and specifications shall be submitted to the Authority and the recipient.
- E. Within 1 year after project completion, the recipient shall certify that the project meets design specifications. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the project does not meet design standards and what will be done to correct the deficiency, together with a schedule for the corrective actions.

R18-15-308. Drinking Water Revolving Fund Requirements

- A. The Board shall identify Drinking Water Revolving Fund requirements applicable to each project pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300(f) to 300(j)(25).
- B. If applicable, the applicant shall design a user charge system to produce adequate revenues for operation and maintenance, including replacement. An applicant's user charge system, based on actual or estimated use of the drinking water facilities, shall provide that each user or user class pays its proportionate share of operation and maintenance, including replacement costs of facilities within the applicant's service area, based on the user's proportionate use of the facilities.
- C. The applicant shall certify that it has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kick-backs, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning or design work on a project.

ARTICLE 4. OTHER FINANCIAL ASSISTANCE

R18-15-401. Types of Financial Assistance Available

- A. The Authority may issue Water Quality Bonds on behalf of eligible applicants for any of the following types of financial assistance:
 - 1. Loans.
 - 2. The purchase or refinance of local debt obligations.
- B. The Authority may guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates for eligible applicants.

R18-15-402. Eligibility Requirements for Financial Assistance

- A. To be eligible to receive financial assistance, an applicant shall propose a project to: plan, design, construct, improve, acquire, or refinance a wastewater facility, a drinking water facility, or a nonpoint source project.
- B. A project eligible under subsection (A) shall also meet all of the following requirements prior to receiving financial assistance:
 - 1. The applicant shall demonstrate legal capability pursuant to R18-15-103.
 - 2. The applicant shall demonstrate financial capability pursuant to R18-15-104.
 - 3. The applicant shall demonstrate technical capability pursuant to R18-15-105.
 - 4. The applicant shall demonstrate managerial and institutional capability pursuant to R18-15-106.

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5. The applicant shall demonstrate completion of the environmental review process pursuant to R18-15-107.
6. The applicant shall demonstrate readiness to proceed pursuant to R18-15-108.
7. The applicant shall obtain or be in the process of obtaining all applicable permits and approvals required by federal, state, and local authorities.

R18-15-403. Project Construction

- A. Construction of a project shall conform to all of the requirements found in this Section.
- B. The Department shall not issue an Approval to Construct to an applicant or recipient until the Department has conducted an on-site inspection.
- C. Prior to awarding contracts for construction associated with the project, the applicant or recipient shall demonstrate all of the following:
 1. All easements and rights-of-way have been obtained.
 2. All contracts, subagreements, and force account work are consistent with the Arizona Procurement Code, A.R.S. §§ 41-2501 et seq.
 3. All required approvals and permits have been obtained from the following entities:
 - a. The Department including the requirements contained in 18 A.A.C. 4 or 18 A.A.C. 9, as applicable.
 - b. Applicable federal, state, and local authorities as related to:
 - i. Leases.
 - ii. Zoning permits.

- iii. Building permits.
- iv. Flood plain approvals.
- v. Air quality permits.
- vi. Solid waste approvals.

- D. During construction of the project, the recipient shall do all the following:
 1. Conduct work in compliance with the requirements of 18 A.A.C. 4 or 18 A.A.C. 9, as applicable.
 2. Employ a qualified, registered, professional engineer to directly supervise construction management and inspection.
- E. Upon project completion, all of the following requirements shall be satisfied:
 1. The project shall receive a final inspection and obtain all certifications and approvals required by 18 A.A.C. 4 or 18 A.A.C. 9, as applicable.
 2. The recipient shall accept the project in writing.
 3. Any required operation and maintenance manual shall be completed.
 4. As-built plans and specifications shall be submitted to the Authority and the recipient.
- F. Within 1 year after project completion, the recipient shall certify that the project meets design specifications. If the recipient is unable to submit the required certification, the recipient shall submit a corrective action plan. This plan shall describe why the project does not meet design standards and what will be done to correct the deficiency, together with a schedule for the corrective actions.